

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honoluludpp.org • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

July 26, 2018

The Honorable Ernest Y. Martin
Chair and Presiding Officer
and Members
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

Dear Chair Martin and Councilmembers:

SUBJECT: Short-Term Rental Package of Bills

We are pleased to submit three bills that address short-term rentals. They largely reflect the concepts presented at the May 3, 2018 Zoning and Housing Committee meeting.

1. Omnibus Bill: This bill amends Chapter 8 Real Property Tax, Chapter 21 Land Use Ordinance (LUO), and Chapter 40 Prohibited Activities in the City. They are under one bill because they are interdependent. Two new tax classifications are proposed for uses established under new zoning regulations. Advertising of short-term rentals without the inclusion of a registration number as required under the new LUO regulations, would be prohibited.

This bill represents the department's recommendation in response to the four Resolutions adopted by the City Council last year. There are several proposals in these resolutions that are included in our bill. For further discussion on the proposed Omnibus bill, please refer to the attached transmittal to the Planning Commission.

Please note that the Planning Commission must first take action on the LUO portions of this Bill, and transmit its recommendation to the City Council before the City Council can take action.

The Honorable Ernest Y. Martin
Chair and Presiding Officer
and Members
July 26, 2018
Page 2

2. False Statements Bill. This bill would clearly delineate that lying to city officials is a misdemeanor with stipulated penalties. The original intent was to limit the bill to DPP inspectors. However, there is value to extend its scope to the inspectors of other city departments. While there may be other statutes that make giving incomplete or inaccurate information to inspectors a misdemeanor, to our knowledge, they are without specified penalties. Proposals similar to this one was considered by the State Legislature this past session, but not adopted.
3. Seller Disclosure Bill. This bill would require disclosure documents for residential sales transactions to include a DPP-signed form indicating whether short-term renting is allowed on the property. A related proposal was contemplated by the Legislature (SB3089), but not adopted.

This package of bills represents many hours of discussion with various stakeholder groups. It is unlikely that there are stakeholders that are completely happy with these bills. However, we have included elements that each stakeholder group can support. We would be the first to admit that this package will not completely solve the problems associated with short-term rentals in our communities. However, we believe that it will make a significant difference in reclaiming residential neighborhoods for residents, and still allow homeowners an opportunity to supplement incomes with short-term tenants.

We look forward to spirited discussion on these proposals. In the meantime, should you have any questions, please contact me at 768-8000.

Very truly yours,



Kathy K. Sokugawa
Acting Director

cc: Mayor Kirk Caldwell

Attachments

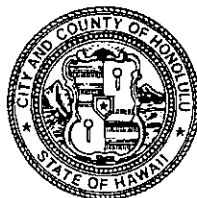
APPROVED:



Roy K. Amemiya, Jr.
Managing Director

OMNIBUS BILL

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

July 20, 2018

MEMORANDUM

TO: Kaiulani Sodaro, Chair
 and Members of the Planning Commission

FROM: Kathy K. Sokugawa, Acting Director
 Department of Planning and Permitting *Kathy Sokugawa*

SUBJECT: Proposed Amendment to Chapter 21, ROH 1990, as Amended (The Land Use Ordinance), Relating to Short-Term Rentals

We are pleased to submit for appropriate action the Department of Planning and Permitting's (DPP) report and recommendation for the proposed amendments relating to Short-Term Rentals (STRs).

The City Council initiated four Resolutions associated with amending Chapter 21, Revised Ordinances of Honolulu (ROH), 1990, Land Use Ordinance (LUO), pertaining to STRs. They are attached and summarized as follows:

Resolution	Key Components
17-52, CD1	<ul style="list-style-type: none"> Strengthens enforcement by allowing neighbors to file claims in District Court Requires hosting platforms to provide data to DPP Restricts advertising
17-163	<ul style="list-style-type: none"> Allows B&Bs and TVUs in Residential, Apartment and Country Districts with a Conditional Use Permit (minor); specifies standards for CUPs Limits the total number of B&Bs and TVUs islandwide Recreates/extends NUCs made illegal in 1989 Restricts advertising Increases fines for violations
17-164	<ul style="list-style-type: none"> Recreates/extends NUCs made illegal in 1989 Restricts advertising Increases fines for violations
17-301	<ul style="list-style-type: none"> Allows B&Bs and TVUs in Residential, Apartment, and Country Districts with a Conditional Use Permit (minor); specifies standards for CUPs Limits the total number of B&Bs and TVUs islandwide and per Council District

Resolution	Key Components
	<ul style="list-style-type: none">• Removes NUC process• Restricts advertising• Increases fines for violations

All Resolutions were adopted by the Council on November 1, 2017.

Rather than recommending the adoption of one or several of the Council's bills, the DPP has drafted its own omnibus bill for consideration (see attached). This bill incorporates many components from the Council's Resolutions and addresses the concerns put forward by the Mayor's Information Group, made up of a broad range of stakeholders. It is also based on numerous discussions with other entities and members of the public.

As an omnibus bill, our proposed bill goes further than just amending the LUO, it amends Chapter 8 Real Property Tax and Chapter 40 Prohibited Activities in the City, to ensure that threats to the sanctity of residential neighborhoods, localized concerns about traffic, noise, artificially created and escalating property values, and other adverse impacts created by an evolving STR industry are balanced against the need to diversify Oahu's visitor accommodations.

The Planning Commission's role is to make recommendations to the Council only on those portions addressing the LUO. This omnibus bill is part of a package of three bills that are being submitted to the Council. The second bill would clearly establish that making false statements to any city official, including inspectors, is a misdemeanor with specific penalties. The third bill would require a new form to be part of the sellers' disclosure documents at the time of any residential sale.

We would be happy to answer any questions that you may have concerning this matter during the Public Hearing.

Attachments

**COUNCIL-INITIATED LAND USE ORDINANCE AMENDMENTS
RELATING TO SHORT-TERM RENTALS
RESOLUTION NO. 17-52, 17-163, 17-164, 17-301**

Staff Report

July 20, 2018

The City Council initiated four Resolutions associated with amending Chapter 21, Revised Ordinances of Honolulu (ROH), 1990, Land Use Ordinance (LUO), pertaining to short-term rentals (STRs). They are attached and summarized as follows:

Resolution	Introduced	Title
17-52, CD1	2/21/17	"Proposing an amendment to Chapter 21, Revised Ordinances of Honolulu, 1990 (The Land Use Ordinance), relating to vacation rentals."
17-163	5/25/17	"Proposing an amendment to Chapter 21, Revised Ordinances of Honolulu, 1990 (The Land Use Ordinance), relating to certain visitor accommodations."
17-164	5/25/17	"Proposing an amendment to Chapter 21, Revised Ordinances of Honolulu, 1990 (The Land Use Ordinance), relating to certain visitor accommodations."
17-301	10/20/17	"Proposing an amendment to Chapter 21, Revised Ordinances of Honolulu, 1990 (The Land Use Ordinance), relating to relating to short-term rental accommodations."

All Resolutions were adopted by the Council on November 1, 2017.

I. BACKGROUND

The Resolutions refer to "vacation rentals," "visitor accommodations," and "short-term rental accommodations." The closest definitions to these terms in Article 10.1 Definitions of the LUO are as follows:

"Bed and breakfast home" means a use in which overnight accommodations are provided to guests for compensation, for periods of less than 30 days, in the same detached dwelling as that occupied by an owner, lessee, operator or proprietor of the detached dwelling.

"Transient vacation unit" means a dwelling unit or lodging unit which is provided for compensation to transient occupants for less than 30 days, other than a bed and breakfast home. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services or labor of employees.

In 1989, the Council adopted Ordinance 89-154 that prohibited transient vacation units (TVUs) and bed and breakfast homes (B&Bs) in all zoning districts, except for in Resort zones and Apartment Medium Density zones that were within 3,500 feet of a Resort zoning district of greater than 50 contiguous acres and that had been rezoned as part of a master-planned resort community.

TVUs and B&Bs that existed before the amendment were allowed to continue only as nonconforming uses, subject to certain restrictions. Pursuant to Ordinance 89-154, if the owner, operator or proprietor of a B&B or TVU could prove that the use existed on December 28, 1989 and obtain a nonconforming use certificate (NUC) within nine months of that date, he or she could continue to operate the B&B or TVU. Initially, the NUC was required to be renewed annually and Applicants needed to submit specific documentation related to State tax licenses.

The regulations were further revised. Ordinance 94-31 required documentation of a minimum of 28 days of B&B occupancies during a calendar year (beginning January 1, 1995) for eligibility to renew a NUC and required that the current NUC certificate be displayed on the premises. Ordinance 94-36 provided for a two-year NUC renewal cycle. NUC's ownership is transferable, but not to other properties.

LUO Sections 21-4.110-1 Nonconforming use certificates for transient vacation units and 21-4.110-2 Bed and breakfast homes - Nonconforming use certificates specify the conditions under which TVUs and B&Bs may operate. Failure to obtain or renew a NUC results in the loss of nonconforming status. A B&B or TVU operating without a NUC is treated as an illegal use. The DPP has not accepted any new applications for NUCs since 1990.

Recognizing that the Council's decisions may have inadvertently impacted the growth and diversity of tourist accommodations, the DPP put forth Bill 79 (2015), in part, to allow NUCs to be issued after the initial filing deadline passed. The proposal recognized that a mechanism was necessary to allow lawfully established TVUs or B&Bs to continue to operate, similar to other nonconforming uses. That legislation was not adopted because it was grouped with other, more minor LUO housekeeping amendments. The DPP was advised to bring forth this recommendation separately.

As of May 2018, there are approximately 816 legal TVUs and B&Bs with NUCs outside of areas where STRs are allowed. Research estimates that 8,000 to 10,000 units are illegally available as STRs on Oahu.

II. ANALYSIS

The rapid growth of illegal units is an indicator of the strong demand for a diversity of STRs and the desire of local residents to generate income by renting out their second homes or bedrooms in their own homes. While there is no definitive study that documents impacts to neighborhoods, there is anecdotal evidence that these uses can

overwhelm and change the character of neighborhoods. And, yet, the City must acknowledge the importance of the tourist industry on Oahu's economy. Simply prohibiting STRs outside of areas where they are legally allowed has not succeeded in squashing this industry that is fueled by social media and aggressive online advertising platforms.

The key components of the Council-initiated Resolutions are as follows:

Reso.	Key Components
17-52, CD1	<ul style="list-style-type: none"> • Strengthens enforcement by allowing neighbors to file claims in District Court • Requires hosting platforms to provide data to DPP • Restricts advertising
17-163	<ul style="list-style-type: none"> • Allows B&Bs and TVUs in Residential, Apartment and Country Districts with a Conditional Use Permit (minor); specifies standards for CUPs • Limits the total number of B&Bs and TVUs islandwide • Recreates/extends NUCs made illegal in 1989 • Restricts advertising • Increases fines for violations
17-164	<ul style="list-style-type: none"> • Recreates/extends NUCs made illegal in 1989 • Restricts advertising • Increases fines for violations
17-301	<ul style="list-style-type: none"> • Allows B&Bs and TVUs in Residential, Apartment and Country Districts with a Conditional Use Permit (minor); specifies standards for CUPs • Limits the total number of B&Bs and TVUs islandwide and per Council District • Removes NUC process • Restricts advertising • Increases fines for violations

There are several components contained in the Council-initiated land use amendments that could help better manage STRs. These include:

- Increased, tiered fines for violations;
- Restrictions on advertising;
- Property-specific development standards; and
- Expansion of certain types of STRs.

In addition to analyzing the four Council-initiated proposals, the DPP has examined various national and local studies and developed an internal report that consolidates facts and trends. The Mayor also appointed representatives from the hotel industry, unions, realtors, neighbor coalitions, finance, and online STR platform to an informal Information Group that the DPP chaired. Seven meetings were held during which views were exchanged and options discussed. The DPP held additional meetings with concerned citizens, housing advocates, and other stakeholders, and received a lot of written, unsolicited recommendations. The DPP also actively participated in efforts with other Counties to generate legislation to guide statewide policy on STRs. Based on the research we have conducted and information received, new legislation governing STRs should:

- Acknowledge the strong demand from visitors and property owners for STRs;
- Create a more level playing field for the traditional hotel industry;
- Better protect residential neighborhoods from the adverse impacts of STRs with a stronger zoning enforcement strategy;
- Connect the regulatory framework to real property tax policy;
- Tap into new real property revenue sources without affecting the assessments of neighboring properties; and,
- Create a program that is relatively easy to administer and minimizes the City's implementation costs.

While such legislation will not eradicate illegal operations, it would provide a reasonable opportunity to promote the diversity of visitor accommodations, while safeguarding residential neighborhoods.

III. RECOMMENDATION

Rather than recommending the adoption of one or several of the Council's bills, the DPP has drafted its own omnibus bill for consideration (see attached). This bill incorporates many components from the Council's Resolutions and addresses the concerns put forward by the Mayor's Information Group, as well as those concerns raised by other entities and members of the public. Our proposed bill amends certain provisions of the ROH, as amended, including Chapter 8 Real Property Tax, Chapter 21 Land Use Ordinance, and Chapter 40 Prohibited Activities in the City, to ensure that threats to the sanctity of residential neighborhoods, localized concerns about traffic, noise, artificially created and escalating property values, and other adverse impacts created by an evolving STR industry are balanced against the need to diversify Oahu's visitor accommodations. Long-term rentals and activities such as home exchange or visits by friends and family are specifically excluded from these regulations.

A. Amendments to ROH Chapter 8 Real Property Tax

Changes to ROH Chapter 8 include creating new tax categories for TVUs and B&Bs. This amendment recognizes that STRs, which are currently taxed as residential uses, are often more similar to hotels and, thus, have a somewhat comparable impact on City services and neighborhoods as hotels. By creating new tax categories, adjacent residential properties should no longer accidentally get penalized with higher assessments. This bill introduces a regulatory system that coordinates annual zoning review and registration of STRs with annual tax assessments.

Creating specific categories for these uses will allow the City to annually set appropriate tax rates and ensure that the property owners with TVUs and B&Bs pay appropriate and commensurate property taxes. Based on the Department of Budget and Fiscal Services' (BFS) current analysis, the estimated tax rate for B&Bs could be approximately \$6.45 and the tax rate for TVUs could be \$12.90. An ordinance

associated with new, higher taxes for STRs will be introduced by BFS in fiscal year 2020.

B. Amendments to ROH Chapter 21 Land Use Ordinance

Changes to ROH Chapter 21 include expanding where B&Bs and TVUs are permitted, but also limiting their total quantity regionally and with more stringent development standards. Proposed expansions are as follows:

- B&Bs would be permitted in all Residential, Apartment, Apartment Mixed Use, Business Mixed Use, and Resort zoning districts, subject to certain development standards;
- TVUs would be permitted in all Business Mixed Use, Apartment, and Apartment Mixed Use zoning districts, subject to certain development standards; and,
- B&Bs and TVUs permitted in Apartment Mixed Use precinct in the Waikiki Special District, subject to certain development standards.

Excluding Resort areas where the number of STRs are not limited, we are proposing that no more than one percent of the total number of dwelling units in each development plan area be allowed as STRs. Our analysis suggests that this formula would result in a maximum of approximately 4,000 legal STRs,

This proposal is intended to incentivize the growth of “hosted” STRs. It recognizes that B&Bs operating with a 24/7 on-site manager can minimize negative impacts on neighbors and help property owners earn some income. Although there are not currently many B&Bs in Oahu, the expansion of this use is the best way to protect neighborhoods while satisfying visitor needs.

Expanding TVUs into Business and Apartment zones is perhaps more controversial, but it recognizes that these districts already have a mix of uses and function at higher densities. Visitors may be better able to blend in and access nearby services without adversely impacting these neighborhoods. Additionally, we recognize that many apartment buildings are governed by Associations of Apartment Owners (AOAOs) that will have the ability to further regulate units. A proposed effective date of the bill in 2019 will give AOAOs the opportunity to discuss this proposal and revise their by-laws as needed to reflect the majority interests in their individual buildings.

As a result of this expansion of STRs, the DPP is also proposing that NUCs be amortized. Most are already located in zoning districts where B&Bs and TVUs will be allowed, but others will be phased out over time.

Building on the existing regulatory system, the DPP proposes to use the NUC registration process as a model by which to process new STRs. Key components of registration will include: only one STR allowed per Applicant; no corporations may apply; and all Applicants must have a home exemption. The DPP believes that these requirements will minimize the ability of corporations to purchase multiple homes for

STRs, and thus reduce Oahu's housing stock. Explicit requirements and standards will be monitored through an initial and annual renewal process. New development standards intended to minimize adverse impacts on neighborhoods include requiring adequate parking on-site, imposing quiet hours and house rules, and requiring that the property owner carry a specified minimum insurance. Again, AOAOs, and the like, will have the opportunity to determine via their by-law process and HRS 514, the State law that governs condominiums, whether individual units may apply for a STR certificate.

DPP's bill also provides for more rigorous enforcement tools. For example, it includes a significant increase of fines that progress based on the number of violations. The fines are similar to those proposed in State HB2605, SD2. The fines are higher for illegal TVUs. Unpaid fines may also be attached to drivers' license renewal and/or real property tax, and recouped via a lien on the property. The bill also gives the City the right to pursue disgorgement, i.e., the City may seek to obtain all the profits made while the illegal activities were conducted. Finally, the bill proposes that all fees associated with litigation be paid by the violator.

C. Amendments to ROH Chapter 40 Prohibited Activities in the City

Changes to ROH Chapter 40 include a new section pertaining to the advertisement of STRs. New definitions are proposed. Property owners may not advertise a B&B or TVU without including in the advertisement a current registration number that DPP will provide upon compliance with the standards and requirements in ROH Chapter 21. It specifies how violations will be handled and identifies the penalties for violations. The text, as drafted, avoids legal confrontation with federal Common Decency and Storage Acts, but gives the City a greater opportunity to prosecute violators based on illegal advertisements. Legally established hotels, long-term rentals and time-shares are exempt from this advertising restriction.

In sum, the DPP believes that this omnibus bill will control the illegal expansion of STRs. This proposal helps maintain Oahu's housing stock, including long-term rentals, by putting a cap on the number of STR certificates issued. The new tax categories will allow BFS to collect appropriate taxes for these uses. It incentivizes "hosted" B&Bs and relegates TVUs to zoning districts where visitors can be better accommodated. The new registration process will allow for easier identification of illegal STRs on-line. The more rigorous enforcement tools and higher fines send a strong message to current violators and the online platforms where illegal STRs are advertised.

Attachments



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 17-52, CD1

RESOLUTION

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO VACATION RENTALS.

WHEREAS, Oahu's residential neighborhoods, particularly those in beachfront areas, continue to experience problems caused by vacation rentals, including noise and traffic; and

WHEREAS, the growth of online vacation rental marketplaces has only exacerbated the problem and contributed to an increase in illegal vacation rentals; and

WHEREAS, the Council therefore desires to propose amendments to the Land Use Ordinance ("LUO") to further regulate vacation rentals; and

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973 (2000 Edition), as amended ("Charter"), provides that "[a]ny revision of or amendment to the zoning ordinances may be proposed by the council and shall be processed in the same manner as if proposed by the director [of planning and permitting]"; and

WHEREAS, the term "zoning ordinances," as used in Charter Section 6-1513 includes both amendments to the LUO and to ordinances designating particular parcels of property in terms of the LUO; and

WHEREAS, ROH Chapter 2, Article 24, establishes procedures and deadlines for the processing of Council proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and clarifies the responsibility of the Director of Planning and Permitting to assist the Council in adequately preparing its proposals for processing; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Planning and Permitting and the Planning Commission are directed, pursuant to Charter Section 6-1513 and ROH Chapter 2, Article 24, to process the proposed amendment to ROH Chapter 21 (the Land Use Ordinance), attached hereto as Exhibit "A," in the same manner as if the proposal had been proposed by the Director; and

BE IT FURTHER RESOLVED that the Director of Planning and Permitting is directed to inform the Council upon the transmittal of the Director's report and the proposed Land Use Ordinance amendment to the Planning Commission; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 17-52, CD1

RESOLUTION

BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, the Clerk transmit copies of this Resolution and the Exhibit attached hereto to the Director of Planning and Permitting and the Planning Commission of the City and County of Honolulu, and shall advise them in writing of the date by which the Director's report and accompanying proposed ordinance are required to be submitted to the Planning Commission.

INTRODUCED BY:

Ron Menor

Joey Manahan

DATE OF INTRODUCTION:

February 16, 2017
Honolulu, Hawaii

Councilmembers

EXHIBIT A



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

RELATING TO VACATION RENTALS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to amend the Land Use Ordinance to further regulate vacation rentals.

SECTION 2. Section 21-2.150-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-2.150-2 Administrative enforcement.

In lieu of or in addition to enforcement pursuant to Section 21-2.150-1, if the director determines that any person is violating any provision of this chapter, any rule adopted thereunder or any permit issued pursuant thereto, the director may have the person served, by mail or delivery, with a notice of violation and order pursuant to this section.

- (a) Contents of the Notice of Violation. The notice shall include at least the following information:
 - (1) Date of the notice;
 - (2) The name and address of the person noticed;
 - (3) The section number of the provision or rule, or the number of the permit which has been violated;
 - (4) The nature of the violation; and
 - (5) The location and time of the violation.
- (b) Contents of Order.
 - (1) The order may require the person to do any or all of the following:
 - (A) Cease and desist from the violation;
 - (B) Correct the violation at the person's own expense before a date specified in the order;



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (C) Pay a civil fine not to exceed \$1,000.00 in the manner, at the place and before the date specified in the order;
 - (D) Pay a civil fine not to exceed \$1,000.00 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.
- (2) The order shall advise the person that the order shall become final 30 days after the date of its mailing or delivery. The order shall also advise that the director's action may be appealed to the zoning board of appeals.
- (c) **Effect of Order—Right to Appeal.** The provisions of the order issued by the director under this section shall become final 30 days after the date of the mailing or delivery of the order. The person may appeal the order to the zoning board of appeals as provided in Section 6-1516 of the city charter. However, an appeal to the zoning board of appeals shall not stay any provision of the order.
 - (d) **Judicial Enforcement of Order.** The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.
 - (e) **Mandamus.** A neighbor as defined in Section 21-10.1 may bring an action in mandamus in the district court of the first circuit, State of Hawaii, to compel the director to issue and enforce an order as provided in this section when the existence of a violation is not reasonably controvertible.
 - (f) **Funding Enforcement.** \$_____ per year and all fines recovered through administrative enforcement of the provisions of this chapter pertaining to bed and breakfast homes and transient vacation units is hereby appropriated to the department and dedicated to investigation and enforcement of such provisions.
 - (g) **Records.** All of the director's records of enforcement actions taken under this section shall be open to the public for inspection and copying without limitation or redaction."

SECTION 3. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990 ("Administration and Enforcement"), is amended to add a new Section 21-2.150-3 to read as follows:



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

"Sec. 21-2.150-3 Private enforcement.

A neighbor may institute a civil action in any court of competent jurisdiction against any person for violation of the provisions of this chapter pertaining to bed and breakfast homes and transient vacation units and shall be entitled to all remedies available under the law or in equity appropriate to remedy any such violation, including but not limited to a fine equal to the gross amount paid by a customer to rent a bed and breakfast home or transient vacation unit, which shall be doubled if the violation is shown to be willful. The department and the zoning board of appeals do not have special competence in or primary jurisdiction over such violations and the neighbor is not required to exhaust any administrative procedures before instituting action. If the neighbor is the prevailing party in any legal action taken pursuant to this section, the court shall award reasonable attorneys' fees and costs as part of the costs recoverable. Any fine which has not been satisfied in full within 90 days and has not been successfully challenged by a timely writ of mandate shall constitute a lien against the real property as to which the violation occurred and may be recorded, provided that no such lien shall be imposed if the owner of the property did not commit a violation of this chapter in connection with the rental and the owner establishes that all phases of the rental, including advertising, offer and exchange, took place without the owner's knowledge. Due to the special competence of the department in investigating and remedying violations of this chapter, no action under this section may be brought until six months after the neighbor has filed a complaint with the department against the person alleged to be in violation of the provisions of this chapter pertaining to bed and breakfast homes and transient vacation units."

SECTION 4. Chapter 21, Article 4, Revised Ordinances of Honolulu 1990 ("General Development Standards"), is amended to add new Sections 21-4.110-3 and 21-4.110-4 to read as follows:

"Sec. 21-4.110-3 Hosting platform reports.

Any hosting platform shall report to the director on a monthly basis, on the date and in the electronic format specified by the director, the street address of each listing on the platform of a bed and breakfast home or transient vacation unit in the city, the names of the persons responsible for each such listing, and the length of each stay and the price paid in such a listing effectuated by or through the platform. All such reports, except information about prices charged and taxes paid, shall be records open to the public for inspection and copying by neighbors of the rental who supply the address of the rental as a condition of the inspection or copying.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

Sec. 21-4.110-4 Unpermitted rental or failure to submit reports unlawful.

(a) It shall be unlawful for any person other than a hosting platform to commit any of the following acts with respect to a bed and breakfast home or transient vacation unit that is not a permitted use under this chapter and does not have a nonconforming use certificate under this chapter:

- (1) Offer to rent a bed and breakfast home or transient vacation unit;
- (2) Accept in exchange for rental of a bed and breakfast home or transient vacation unit any money or other thing of value, including any rent, fees, commissions, revenue-sharing, rebates, refunds or other exchanges of value; or
- (3) Advertise rental of a bed and breakfast home or transient vacation unit by any means including signs, print, or electronic media.

(b) It shall be unlawful for a hosting platform to commit any of the following acts with respect to a bed and breakfast home or transient vacation unit that is not a permitted use under this chapter and does not have a nonconforming use certificate under this chapter:

- (1) Offer any goods or services, including without limitation cleaning, insurance, catering, hotel or restaurant bookings, or guide services; or
- (2) Fail to file any report required by Section 21-4.110-3."

SECTION 5. Section 21-10.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by amending the definition of "Transient vacation unit" to read as follows:

"Transient vacation unit" means a dwelling unit or lodging unit which is provided for compensation to transient occupants for less than 30 days (occupancies of less than 30 days apiece), other than a bed and breakfast home. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services or labor of employees."

SECTION 6. Section 21-10.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by adding new definitions of "Hosting platform" and "Neighbor" to be inserted in their proper alphabetic order, and to read as follows:



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

""Neighbor" means any property owner or tenant all or any part of whose principal residence is within a 1,000-foot radius of real property on which a short-term residential rental occurs."

""Hosting platform" means a marketplace in whatever form or format which facilitates the rental of a bed and breakfast home or transient vacation unit, through advertising, match-making or any other means, using any medium of facilitation, if the operator of the hosting platform derives revenues, including booking fees or advertising revenues, from providing or maintaining the marketplace."

SECTION 7. New ordinance material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the underscoring.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 8. This ordinance takes effect upon its approval.

INTRODUCED BY:

Ron Menor

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 17-52, CD1

Introduced: 02/16/17 By: RON MENOR

Committee: ZONING AND HOUSING

Title: RESOLUTION PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO VACATION RENTALS.

Voting Legend: * = Aye w/Reservations

02/22/17	COUNCIL	RESOLUTION CANCELLED AND NOT CONSIDERED.
04/06/17	ZONING AND HOUSING	RESOLUTION DEFERRED IN COMMITTEE.
10/26/17	ZONING AND HOUSING	CR-405 - RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION AS AMENDED IN CD1 FORM.
11/01/17	COUNCIL	CR-405 AND RESOLUTION 17-52, CD1 WERE ADOPTED. 8 AYES: ANDERSON, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE. 1 NO: ELEFANTE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.



GLEN J. TAKAHASHI, CITY CLERK



RON MENOR, CHAIR AND PRESIDING OFFICER



RESOLUTION

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

WHEREAS, under the current Land Use Ordinance ("LUO"), transient vacation units ("TVUs") are permitted as of right in the Resort District and the Resort Mixed Use Precinct of the Waikiki Special District. TVUs are also permitted in the A-2 Medium Density District if they are within 3,500 feet of a Resort District of greater than 50 contiguous acres and the Resort District and the A-2 District were rezoned pursuant to the same zone change application as part of a master-planned resort community. TVUs are not allowed in any other zoning district; and

WHEREAS, Ordinance 89-154 established provisions that allowed TVUs located in zoning districts where they were no longer allowed to continue in operation if they were in existence prior to certain preceding dates and obtained a nonconforming use certificate ("NUC"); and

WHEREAS, Ordinance 89-154 prohibited new bed and breakfast homes ("B&Bs") in all zoning districts, but allowed existing B&Bs to continue in operation if they were in existence prior to certain preceding dates and obtained an NUC; and

WHEREAS, certain residential areas on Oahu have had long-term problems with illegal TVU or B&B operations, resulting in complaints to the City about noise, illegal parking, and other problems associated with such operations; and

WHEREAS, the Council believes that establishing a permitting process and standards for TVU and B&B operations will minimize the impact of these uses in residential areas and result in a reduction of the problems associated with illegal TVU and B&B operations; and

WHEREAS, the Council attempted to address these problems in 2008 and 2015, when it considered bills relating to TVUs or B&Bs, but was unable reach consensus on a solution at that time; and

WHEREAS, the Council believes that because of the continuing problems with illegal TVU and B&B operations in residential neighborhoods, it is time to restart the discussion and once again attempt to address the problems; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 17-163

RESOLUTION

WHEREAS, the Council therefore desires to propose amendments to the LUO to allow a limited number of new TVUs or B&Bs in certain geographic residential areas where they are currently prohibited, subject to certain permitting processes and operating standards; and

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973 (2000 Edition), as amended ("Charter"), provides that "[a]ny revision of or amendment to the zoning ordinances may be proposed by the council and shall be processed in the same manner as if proposed by the director [of planning and permitting]"; and

WHEREAS, the term "zoning ordinances," as used in Charter Section 6-1513 includes both amendments to the LUO and to ordinances designating particular parcels of property in terms of the LUO; and

WHEREAS, Chapter 2, Article 24, Revised Ordinances of Honolulu 1990 ("ROH"), establishes procedures and deadlines for the processing of Council proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and clarifies the responsibility of the Director of Planning and Permitting to assist the Council in adequately preparing its proposals for processing; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Planning and Permitting and the Planning Commission are directed, pursuant to Charter Section 6-1513, and ROH Chapter 2, Article 24, to process the proposed amendment to ROH Chapter 21 (the "Land Use Ordinance"), attached hereto as Exhibit A, in the same manner as if the proposal had been proposed by the Director; and

BE IT FURTHER RESOLVED that the Director of Planning and Permitting is directed to inform the Council upon the transmittal of the Director's report and the proposed Land Use Ordinance amendment to the Planning Commission; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 17-163

RESOLUTION

BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, the Clerk shall transmit copies of this resolution and the Exhibit attached hereto to the Director of Planning and Permitting and the Planning Commission of the City and County of Honolulu, and shall advise them in writing of the date by which the Director's report and accompanying proposed ordinance are required to be submitted to the Planning Commission.

INTRODUCED BY

[Signature]

DATE OF INTRODUCTION:

MAY 25 2017

Honolulu, Hawaii

Councilmembers

20170525 11:53:21

EXHIBIT A



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to amend the Land Use Ordinance's regulation of transient vacation units and bed and breakfast homes. In particular, it allows transient vacation units and bed and breakfast homes currently operating under a nonconforming use certificate to continue to operate under such a certificate, and establishes these uses as conditional uses in certain zoning districts subject to standards and restrictions. The standards and restrictions and the conditional use permitting process are intended to minimize the impact of transient vacation units and bed and breakfast homes in those zoning districts. This ordinance also adds requirements for the advertising of all transient vacation units and bed and breakfast homes.

SECTION 2. Section 21-2.40-1, Revised Ordinances of Honolulu 1990 ("Minor permits"), is amended by adding a new subsection (d) to read as follows:

"(d) Application and Processing for a Minor Permit for a Transient Vacation Unit or Bed and Breakfast Home.

(1) Eligibility.

(A) Only the fee simple owner of record, or the lessee of record with more than 15 years remaining in the term of the lease at the time of permit application, of the real property proposed for a transient vacation unit is eligible for a conditional use permit (minor) for the transient vacation unit.

(B) Only persons having a real property tax home exemption under Section 8-10.4 for the tax map key parcel proposed for a bed and breakfast home are eligible for a conditional use permit (minor) for the bed and breakfast home.

(2) All permit applications must include:

(A) For transient vacation units, the name, address, and telephone number of the applicant and verification that the applicant is the owner or lessee of the real property. If the applicant is a lessee, the applicant must submit evidence that there are at least 15 years remaining in the term of the lease. If a proposed transient vacation



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

unit will be managed by an operator, the name, address, and telephone number of the operator also must be provided;

- (B) For bed and breakfast homes, the name, address, and telephone number of the applicant, verification that the applicant is the owner of the zoning lot, and verification that the owner's primary residence is on the same tax map key parcel as the bed and breakfast home;
 - (C) The tax map key number of the real property where the use will be conducted; and
 - (D) A floor plan of the transient vacation unit or bed and breakfast home.
- (3) An applicant seeking a permit for a transient vacation unit or bed and breakfast home shall submit an application to the director for processing. The director shall number stamp the application and process it in the order in which it is received.
- (4) Notwithstanding Section 6-41.1(a)(8), the fee for a conditional use permit (minor) for a transient vacation unit or bed and breakfast home is \$2,000. All fees for transient vacation unit or bed and breakfast home permits, including all renewals thereof, are to be used for the department's regulation of transient vacation units and bed and breakfast homes.
- (5) Within 45 days of the director's acceptance of the completed application, the director shall:
- (A) Approve the application as submitted;
 - (B) Approve the application with modifications and/or conditions; or
 - (C) Deny the application and provide the applicant with a written explanation for the denial and required actions by the applicant necessary to obtain approval of the application. If the applicant makes the appropriate corrections and resubmits the application, the director shall act on the resubmitted application within 45 days as provided in this subdivision.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

Provided, however, that if an applicant substantially amends an application after acceptance by the director, the director will have up to 45 days from the date of such amendment to act on the application as provided in this section."

SECTION 3. Section 21-2.150-2, Revised Ordinances of Honolulu 1990 ("Administrative enforcement"), is amended by adding a new subsection (e) to read as follows:

"(e) Where the director, pursuant to subsection (d), has instituted a civil action in any court of competent jurisdiction to enforce the civil fine imposed by any order issued pursuant to this section, all costs of enforcement, including legal costs and attorneys' fees, may be reduced to a judgment or recorded as a lien against the property on which such enforcement occurs. A lien recorded against the property that is registered in the bureau of conveyances or land court is enforceable in the same manner as any mortgage or other lien on real property. The interest secured by the city lien is senior to any lien recorded or registered after the city lien is recorded and subordinate to any lien recorded prior to the city lien."

SECTION 4. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-3 to read as follows:

"Sec. 21-2.150-3 Information required in advertisement for transient vacation unit or bed and breakfast home—Notice and penalty.

- (a) If any advertisement does not have the information required by Section 21-5.640A(n), the owner or the rental agent of the transient vacation unit or bed and breakfast home being advertised shall, within seven business days of receiving a notice of violation, terminate the dissemination of any advertisements that do not contain the required information, and shall, within seven business days of receiving a notice of violation, take action to cure the violation. Failure to do so will subject the owner or rental agent to the civil fines provided in subsection (b).
- (b) Any owner or rental agent of a transient vacation unit or bed and breakfast home violating this section is subject to the following civil fines:
- (1) For a first violation, an initial fine of \$5,000, and daily fines of \$5,000 per day until the violation is corrected;



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

(2) For a second violation occurring within a twelve-month period, a fine of \$7,500, and daily fines of \$7,500 per day until the violation is corrected. Recurring violations occur when the previous violation has been corrected and a subsequent infraction of the same section occurs; and

(3) For a third violation occurring within a twelve-month period, an initial fine of \$10,000, and daily fines of \$10,000 per day until the violation is corrected.

Nothing in this subsection precludes the department from seeking any other remedy against a violator of this section.

(c) Except as otherwise provided in this section, the provisions of Section 21-2.150-2 apply to the administrative enforcement for violations of Section 21-5.640A(n)."

SECTION 5. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-4 to read as follows:

"Sec. 21-2.150-4 Depository of fees and civil penalties relating to transient vacation units or bed and breakfast homes.

Notwithstanding any other ordinance to the contrary, payments of fees and civil penalties relating to transient vacation units or bed and breakfast homes are to be deposited into a special account of the general fund, to be appropriately named by the department of budget and fiscal services, and used for expenses related to the regulation of such uses by the department."



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (b) ~~[The owner, operator, or proprietor of any transient vacation unit which is operating in an area where such use is not expressly permitted by this chapter shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the years 1986 to 1989. Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.]~~
- (c) ~~Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.~~
- (d) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate ~~[in accordance with the following schedule:~~
- (1) ~~between September 1, 2000 and October 15, 2000; then~~
- (2) ~~between September 1 and October 15 of every even-numbered year thereafter.]~~ no later than September 30 of each year. Each application to renew ~~[shall] must~~ include proof that: ~~[(i) there]~~
- (1) There were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year; and ~~[that (ii) there]~~
- (2) There has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

If the applicant does not reside on Oahu, the application must include the name, address, and phone number of an on-island licensed agent for receipt of any notices or complaints. Applicants shall keep their licensed agent information current with the department. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate[;], except where the applicant establishes good cause for failing to meet conditions of renewal. In such situations, an additional fee of \$1,000 will be assessed against the applicant upon approval of each application. In no case will an application for renewal received 45 days or more after the expiration of the renewal period be approved. The requirement for the 35 days of transient occupancies [shall] will be effective on January 1, 1995 and [shall apply] applies to renewal applications submitted on or after January 1, 1996.

- [(e)](c) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.
- (d) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section, and any rental agent thereof, shall comply with the provisions of Sections 21-5.640A(n) and 21-2.150-3, relating to information required in advertisements for transient vacation units; provided that, instead of the permit number, the advertisement must include the nonconforming use certificate number.
- (e) The nonconforming use certificate will not run with the land and will terminate upon the transfer of any interest in the real property. A new owner may apply for a conditional use permit (minor) for a transient vacation unit pursuant to the requirements of this chapter. For purposes of this subsection, "transfer" does not include:
- (1) The creation, modification, or release of a lien or encumbrance;
 - (2) The transfer, during the owner's lifetime and for estate planning purposes, of the owner's entire interest in the real property to a trust in which the owner is the sole trustee and beneficiary;
 - (3) A gratuitous transfer made to an owner's spouse, domestic partner or issue, including adopted children, or to a trust for the exclusive benefit of the owner's spouse, domestic partner or issue;



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (4) A transfer of title to the owner's spouse, domestic partner or issue, including adopted children, effected pursuant to the owner's will, trust or the laws of intestate succession; or
- (5) For property held in joint tenancy or tenancy by the entirety, the acquisition by a surviving cotenant or cotenants of an interest in real property as a result of the right of survivorship and the death of a cotenant."

SECTION 8. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-2 ~~[Bed and breakfast homes—]~~ Nonconforming use certificates for bed and breakfast homes.

- (a) The purpose of this section is to ~~[prohibit bed and breakfast homes, while-permitting]~~ permit certain bed and breakfast homes ~~[which]~~ that have been in operation since prior to December 28, 1989 to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a bed and breakfast home who holds a valid and current nonconforming use certificate pursuant to this section on the effective date of this ordinance.
- (b) ~~[The owner, operator, or proprietor of any bed and breakfast home shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence as of December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence of a bed and breakfast home as of December 28, 1989 may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the year preceding December 28, 1989. Upon a determination that the use was in existence as of December 28, 1989, the director shall issue a nonconforming use certificate for the bed and breakfast home.]~~
- (c) ~~Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use, but shall be treated as an illegal use.~~



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

~~(d)~~ The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate ~~[in accordance with the following schedule:~~

~~(1) between September 1, 2000 and October 15, 2000; then~~

~~(2) between September 1 and October 15 of every even-numbered year thereafter.] no later than September 30 of each year.~~ Each application to renew ~~[shall]~~ must include proof that: ~~[(i) there]~~

(1) There were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for each calendar year covered by the nonconforming use certificate being renewed and that there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28 days during each such year; and [that (ii) there]

(2) There has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy.

Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate[-], except where the applicant establishes good cause for failing to meet conditions of renewal. In such situations, an additional fee of \$1,000 will be assessed against the applicant upon approval of each application. In no case will an application for renewal received 45 days or more after the expiration of the renewal period be approved. The requirement for the 28 days of bed and breakfast occupancies [shall] will be effective on January 1, 1995 and [shall apply] applies to renewal applications submitted on or after January 1, 1996.

~~[(e) Except those bed and breakfast homes that are nonconforming uses, and, after nine months from December 28, 1989, for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section, bed and breakfast homes are prohibited in all zoning districts. Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.~~

~~(f) These bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:~~



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- ~~(1) Detached dwellings used as bed and breakfast homes must be occupied by a family and shall not be used as a group living facility. Rooming shall not be permitted in bed and breakfast homes.~~
- ~~(2) No more than two guest rooms may be rented to guests, and a maximum number of guests permitted within the bed and breakfast home at any one time shall be four.~~
- ~~(3) There shall be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.~~
- ~~(4) One off-street parking space shall be provided for each guest room, in addition to the required spaces for the dwelling unit.~~
- ~~(f)(c)~~ (c) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises.
- (d) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section, and any rental agent thereof, shall comply with the provisions of Sections 21-5.640A(n) and 21-2.150-3, relating to information required in advertisements for bed and breakfast homes; provided that, instead of the permit number, the advertisement must include the nonconforming use certificate number.
- (e) The nonconforming use certificate will not run with the land and will terminate upon the transfer of any interest in the real property. A new owner may apply for a conditional use permit (minor) for a bed and breakfast home pursuant to the requirements of this chapter. For purposes of this subsection, "transfer" does not include:
 - (1) The creation, modification, or release of a lien or encumbrance;
 - (2) The transfer, during the owner's lifetime and for estate planning purposes, of the owner's entire interest in the real property to a trust in which the owner is the sole trustee and beneficiary;
 - (3) A gratuitous transfer made to an owner's spouse, domestic partner or issue, including adopted children, or to a trust for the exclusive benefit of the owner's spouse, domestic partner or issue;



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (4) A transfer of title to the owner's spouse, domestic partner or issue, including adopted children, effected pursuant to the owner's will, trust or the laws of intestate succession; or
- (5) For property held in joint tenancy or tenancy by the entirety, the acquisition by a surviving cotenant or cotenants of an interest in real property as a result of the right of survivorship and the death of a cotenant."

SECTION 9. Section 21-5.350, Revised Ordinances of Honolulu 1990 ("Home occupations"), is amended by amending subsection (i) to read as follows:

"(i) The following activities are not permitted as home occupations:

- (1) Automobile repair and painting. However, any repair and painting of vehicles owned by household members shall be permitted, provided that the number of vehicles repaired or painted shall not exceed five per year per dwelling unit. A household member providing any legal document showing ownership of an affected vehicle shall be deemed to satisfy this requirement.
- (2) Contractor's storage yards.
- (3) Care, treatment or boarding of animals in exchange for money, goods or services. The occasional boarding and the occasional grooming of animals not exceeding five animals per day shall be permitted as home occupations.
- (4) Those on-premises activities and uses which are only permitted in the industrial districts.
- (5) Use of dwellings or lots as a headquarters for the assembly of employees for instructions or other purposes, or to be dispatched for work to other locations.
- (6) Sale of guns and ammunition.
- (7) Mail and package handling and delivery businesses.
- (8) Use of the dwelling as a transient vacation unit or bed and breakfast home."



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 10. Section 21-5.640, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-5.640 Time sharing and transient vacation units.

- (a) Time sharing and transient vacation units ~~[shall be]~~ are permitted in the A-2 medium density apartment zoning district provided:
- ~~[(a)]~~(1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and
- ~~[(b)]~~(2) The resort district and the A-2 district ~~[shall]~~ have been rezoned pursuant to the same zone change application as part of a master-planned resort community.
- (b) This subsection applies to any transient vacation unit subject to subsection (a), or located in the resort district or the resort mixed use precinct of the Waikiki special district. The owner, operator, or proprietor of the transient vacation unit, and any rental agent thereof, shall comply with the provisions of Sections 21-5.640A(n) and 21-2.150-3, relating to information required in advertisements for transient vacation units; provided that the advertisement must only include the street address, including, if applicable, any apartment unit number, for the transient vacation unit."

SECTION 11. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990 ("Specific Use Development Standards"), is amended by adding a new Section 21-5.640A to read as follows:

"Sec. 21-5.640A Transient vacation units and bed and breakfast homes.

- (a) This section applies to:
- (1) Transient vacation units in the residential and apartment districts; provided that it does not apply to transient vacation units in the A-2 medium density apartment district that are subject to Section 21-5.640; and
- (2) All bed and breakfast homes.
- (b) As used in this section:
- "Permit" means the conditional use permit (minor) for a transient vacation unit or bed and breakfast home; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

"Owner" means: (1) the fee simple owner of record, or the lessee of record with more than 15 years remaining in the term of the lease at the time of application for the permit, of the real property used as a transient vacation unit; or (2) the person having a real property tax home exemption under Section 8-10.4 for the tax map key parcel on which a bed and breakfast home is located.

(c) The number of permits issued and outstanding pursuant to this section is limited as follows:

(1) City-wide limit. The total number of permits in the city cannot exceed _____ percent of the total number of properties classified as residential or residential A by the director of budget and fiscal services pursuant to Section 8-2.2 for the 2017-2018 fiscal year. This 2017-2018 number will be the permanent city-wide limit for purposes of this subsection.

(2) Limit in each development plan area. The number of permits issued for properties located in each development plan area cannot exceed _____ percent of the city-wide limit established in subdivision (1). Of the number of permits available in each development plan area:

(A) _____ percent will be for transient vacation units; and

(B) _____ percent will be for bed and breakfast homes.

(3) Of the number of permits available in each development plan area, preference will first be given to persons who hold a current nonconforming use certificate for a transient vacation unit or bed and breakfast home, provided that application therefore is made during the term of the nonconforming use certificate or within 60 days after the expiration and nonrenewal thereof. Thereafter, permits will be issued in the order in which the application is received. Applications received after the applicable permit limits have been reached will be placed on a waiting list and be eligible for processing in the order received.

(d) Permit holder; restrictions.

(1) The permit for a transient vacation unit must be in the name of the owner. If the applicant is a lessee, the applicant shall provide written authorization from the lessor allowing the unit to be used as a transient vacation unit.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (2) The permit for a bed and breakfast home must be in the name of the owner. The owner, or in the event of real property held jointly, by the entirety, or in common, at least one individual owner shall reside on the property on which a bed and breakfast home is located. No more than three bedrooms in a bed and breakfast home may be rented to guests, and the maximum number of guests per bedroom is two.
- (e) The owner shall hold a current transient accommodations tax (TAT) license and a general excise tax (GET) license for the transient vacation unit or bed and breakfast home in the owner's name.
- (f) An owner may not hold more than one permit at one time.
- (g) Section 21-2.90-2(c) and Section 21-7.40(c) and (d) notwithstanding, there can be no exterior signage that advertises or announces that the dwelling is used as a transient vacation unit or bed and breakfast home.
- (h) Section 21-2.90-2(c) notwithstanding, off-street parking spaces must be provided for all guest vehicles at the transient vacation unit or bed and breakfast home. Tandem parking is acceptable and the parking area may be composed of natural materials in order to preserve the natural appearance.
- (i) The permit will not run with the land and will terminate upon the transfer of any interest in the real property. A new owner may apply for a permit for a transient vacation unit or bed and breakfast home pursuant to the requirements of this chapter. For purposes of this subsection and subsection (i), "transfer" does not include:
- (1) The creation, modification, or release of a lien or encumbrance;
 - (2) The transfer, during the owner's lifetime and for estate planning purposes, of the owner's entire interest in the real property to a trust in which the owner is the sole trustee and beneficiary;
 - (3) A gratuitous transfer made to an owner's spouse, domestic partner or issue, including adopted children, or to a trust for the exclusive benefit of the owner's spouse, domestic partner or issue;
 - (4) A transfer of title to the owner's spouse, domestic partner or issue, including adopted children, effected pursuant to the owner's will, trust or the laws of intestate succession; or



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (5) For property held in joint tenancy or tenancy by the entirety, the acquisition by a surviving cotenant or cotenants of an interest in real property as a result of the right of survivorship and the death of a cotenant.
- (j) The owner shall, within 14 business days, notify the director in writing of the transfer of any interest in the transient vacation unit or bed and breakfast home, or if the owner will no longer be residing on the property on which a bed and breakfast home is located.
- (k) The transient vacation unit or bed and breakfast home must be operated in accordance with the following standards:
- (1) Within ten days of the issuance of the permit, the owner shall provide his or her name and contact telephone number to the residents on all adjoining properties. The owner shall provide proof of such notification to the director within 30 days after issuance of the permit.
- (2) The owner shall maintain a register setting forth the names of all guests, the dates of their respective stays, and the year, make, model, and license plate number of the vehicles used by the guests. The register must be preserved for the term of the permit and until such time as the permit is renewed or is terminated. The owner shall provide the director, the director's authorized agent, or the police department with access to the register upon request.
- (3) The owner shall post the current permit in the interior entryway of the transient vacation unit or bed and breakfast home.
- (4) The owner shall establish and enforce written house rules, include the rules in the guest rental agreement, and post the rules in a prominent location in the transient vacation unit or bed and breakfast home. The rules must, at a minimum:
- (A) Require that all guest vehicles be parked on the premises; and
- (B) Prohibit any activity or noise that disrupts the peace and quiet of the neighborhood, particularly between the hours of 10:00 p.m. and 7:00 a.m.

A copy of the house rules must be submitted with the application for the permit or any renewal thereof.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (5) The owner shall comply with all applicable provisions of the Fire Code.
- (l) The owner shall respond to any complaint received from neighboring residents regarding the operation of the transient vacation unit or bed and breakfast home within two hours after receipt of the complaint. The owner shall maintain a log of every complaint received from neighboring residents, including the name and address of the neighbor, the date and time of the complaint, a detailed description of the complaint, and a detailed description of the response to the complaint. The owner shall keep the neighbor informed as to how the complaint was handled. The owner shall provide access to the complaint log to the director or the director's authorized agent upon request. This subsection does not apply to anonymous complaints.
- (m) The owner shall grant access to the transient vacation unit or bed and breakfast home to the director or the director's authorized agent, upon 24 hours' prior written notice delivered to the owner, for purposes of allowing inspection of the premises to ensure compliance with this section or any permit condition.
- (n) Advertisements.
- (1) Information required: The owner and any rental agent thereof, shall include, in all advertisements for occupancy of the unit, the permit number and street address, including, if applicable, any apartment unit number, for the transient vacation unit or bed and breakfast home. For the purpose of this subsection and Section 21-2.150-3:
- (A) "Advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by or at the direction of the owner of a transient vacation unit or bed and breakfast home in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and through the internet; and
- (B) "Rental agent" means any person who lists, solicits for prospective lessees or renters for, leases or offers to lease, or rents or offers to rent, a transient vacation unit or bed and breakfast home owned by another person.
- (2) Prima facie evidence. The existence of an advertisement for a transient vacation unit or bed and breakfast home will be prima facie evidence of the following:



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (A) That the owner of the advertised unit disseminated or directed the dissemination of the advertisement in that form and manner, regardless of whether the advertisement bears the name, business address, or service mark of the rental agent; and
- (B) That a transient vacation unit or bed and breakfast home, as applicable, is being operated at the listed address.

The burden of proof shall be on the owner to establish otherwise with respect to the advertisement and that the subject property either is not being used as a transient vacation unit or bed and breakfast home, or that it is being used legally for such purpose.

(o) Permit expiration and renewal.

- (1) The permit expires two years after issuance, unless revoked prior to expiration. If a permit is suspended, time will continue to run for measuring the period of that permit's validity.
- (2) Not more than 90, but not less than 45 days before the expiration of a permit, the owner may apply for a renewal of the permit on an appropriate application form provided by the director. The renewal will be subject to the same requirements as an application for a new permit, except that they will not be subject to the city-wide and development plan area numerical restrictions. The renewal application must be accompanied by satisfactory evidence, such as a tax clearance certificate signed by the State of Hawaii director of taxation, showing that the owner does not owe the State of Hawaii any delinquent general excise taxes, transient accommodations taxes, penalties, or interest, in connection with operation of the transient vacation unit or bed and breakfast home.
- (3) A grace period of not less than 30 days will be granted for an owner who does not renew the owner's permit by its expiration date, during which period the transient vacation unit or bed and breakfast home permit will continue in full force and effect. When renewing after a permit's expiration, the owner shall pay a late fee of \$1,000 in addition to the standard renewal fees.
- (4) The renewal application must be accompanied by a renewal fee that is the same as the fee for a new permit application.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

(5) The following may be grounds for nonrenewal of the permit:

(A) Violation of any provision of this section;

(B) Violation of any permit condition; or

(C) Violation of any other city ordinance, or state or federal law;

during the term of the previous permit, regardless of whether the violation has been corrected at the time of the application.

(p) Revocation or suspension of permit.

The director may revoke or suspend a permit for good cause, including but not limited to:

(1) Violation of any provision of this section;

(2) Violation of any permit condition;

(3) Violation of any other city ordinance, or state or federal law; or

(4) Misrepresentations, or willful, substantial omissions of material facts in the permit application.

The director shall provide the owner written notice of a revocation or suspension decision, stating the grounds for the suspension or revocation. The suspension or revocation takes effect ten days following the receipt of notice of the revocation or suspension, unless a timely appeal has been filed."



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 12. Table 21-9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct Permitted Uses and Structures"), is amended by amending the "transient vacation units" use or structure entry and the explanatory notes following the table to read as follows:

"Table 21-9.6(A) Waikiki Special District Precinct Permitted Uses and Structures"			
Use or Structure	Precinct		
	Apartment	Resort Mixed Use	Public
Transient vacation units		[P] P/c	

Ministerial uses:

- Ac = Special accessory use. Also see: Article 10, Accessory use; and Section 21-5.330, Home occupations
- P = Permitted principal use
- P/c = Permitted use subject to standards in Article 5
- P9 = Permitted principal use subject to standards enumerated in Article 9; see Section 21-9.80-5(d), 21-9.80-6(d), or 21-9.80-8(d)
- P-AMX = Within the apartment precinct, a permitted principal use only within the apartment mixed use subprecinct

Discretionary uses:

- Cm = Requires an approved Conditional Use Permit - minor subject to standards in Article 5; no public hearing required
- C = Requires an approved Conditional Use Permit - major subject to standards in Article 5; public hearing required

Other:

- N/A = Not applicable as a land use category in that precinct, since it is already regulated under another land use category.

Note: An empty cell in the above matrix indicates that use or structure is not permitted in that precinct.

¹ Provided a solid wall 6 feet in height [shall] must be erected and maintained on any side or rear boundary adjoining the apartment precinct.

² Provided that where these uses are integrated with other uses, pedestrian access [shall] must be independent from the other uses, and [no] the building floor [shall] cannot be used for both dwelling and commercial purposes."



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 13. Section 21-10.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by amending the definition of "bed and breakfast home" to read as follows:

"'Bed and breakfast home" means a use in which overnight accommodations are provided to guests for compensation, for periods of less than 30 days, ~~[in the same detached dwelling as that occupied by an owner, lessee, operator or proprietor of the detached dwelling.]~~ on the same tax map key parcel as that for which a real property tax home exemption for the bed and breakfast owner has been granted under Section 8-10.4. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services or labor of employees."

SECTION 14. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. The Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of this ordinance with the actual date on which the ordinance takes effect.

SECTION 15. An owner, operator, or proprietor of a transient vacation unit or bed and breakfast home who holds a valid and current nonconforming use certificate issued pursuant to the Revised Ordinances of Honolulu ("ROH"), Sections 21-4.110-1 or 21-4.110-2 on the effective date of this ordinance will be allowed to continue to operate the transient vacation unit or bed and breakfast home pursuant to ROH Sections 21-4.110-1 or 21-4.110-2, as amended. The owner, operator, or proprietor of the transient vacation unit or bed and breakfast home shall cease its operation upon the expiration and nonrenewal of the nonconforming use certificate, provided that the owner may thereafter apply for a conditional use permit (minor) for a transient vacation unit or bed and breakfast home pursuant to the provisions of ROH Chapter 21.



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 16. This ordinance takes effect 180 days after its approval, provided that the following takes effect upon approval — within 90 days of the enactment of this ordinance, the Director of Planning and Permitting shall mail notice of the enactment of this ordinance and of Section 13 thereof to all holders of a current nonconforming use certificate for a transient vacation unit or bed and breakfast home.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 17-163

Introduced: 05/25/17 By: ERNEST MARTIN

Committee: ZONING AND HOUSING

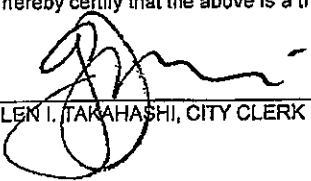
Title: RESOLUTION PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

Voting Legend: * = Aye w/Reservations

10/26/17	ZONING AND HOUSING	CR-406 -- RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
----------	--------------------	--

11/01/17	COUNCIL	CR-406 AND RESOLUTION 17-163 WERE ADOPTED. 8 AYES: ANDERSON, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE. 1 NO: ELEFANTE.
----------	---------	--

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.



GLEN I. TAKAHASHI, CITY CLERK



RON MENOR, CHAIR AND PRESIDING OFFICER



RESOLUTION

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

WHEREAS, under the current Land Use Ordinance ("LUO"), transient vacation units ("TVUs") are permitted as of right in the Resort District and the Resort Mixed Use Precinct of the Waikiki Special District. TVUs are also permitted in the A-2 Medium Density District if they are within 3,500 feet of a Resort District of greater than 50 contiguous acres and the Resort District and the A-2 District were rezoned pursuant to the same zone change application as part of a master-planned resort community. TVUs are not allowed in any other zoning district; and

WHEREAS, Ordinance 89-154 established provisions that allowed TVUs located in zoning districts where they were no longer allowed to continue in operation if they were in existence prior to certain preceding dates and obtained a nonconforming use certificate ("NUC"); and

WHEREAS, Ordinance 89-154 prohibited new bed and breakfast homes ("B&Bs") in all zoning districts, but allowed existing B&Bs to continue in operation if they were in existence prior to certain preceding dates and obtained an NUC; and

WHEREAS, certain residential areas on Oahu have had long-term problems with illegal TVU or B&B operations, resulting in complaints to the City about noise, illegal parking, and other problems associated with such operations; and

WHEREAS, enforcement efforts against illegal TVU and B&B operations have proven to be difficult because City officials must confirm that a renter is staying for less than the legal minimum 30-day rental term; and

WHEREAS, the Council therefore desires to propose amendments to the LUO relating to TVUs and B&Bs to facilitate enforcement efforts and revise associated nonconforming use certificate provisions; and

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973 (2000 Edition), as amended ("Charter"), provides that "[a]ny revision of or amendment to the zoning ordinances may be proposed by the council and shall be processed in the same manner as if proposed by the director [of planning and permitting]"; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 17-164

RESOLUTION

WHEREAS, the term "zoning ordinances," as used in Charter Section 6-1513, includes both amendments to the LUO and to ordinances designating particular parcels of property in terms of the LUO; and

WHEREAS, Chapter 2, Article 24, Revised Ordinances of Honolulu 1990 ("ROH"), establishes procedures and deadlines for the processing of Council proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and clarifies the responsibility of the Director of Planning and Permitting to assist the Council in adequately preparing its proposals for processing; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Planning and Permitting and the Planning Commission are directed, pursuant to Charter Section 6-1513, and ROH Chapter 2, Article 24, to process the proposed amendment to ROH Chapter 21 (the "Land Use Ordinance"), attached hereto as Exhibit A, in the same manner as if the proposal had been proposed by the Director; and

BE IT FURTHER RESOLVED that the Director of Planning and Permitting is directed to inform the Council upon the transmittal of the Director's report and the proposed Land Use Ordinance amendment to the Planning Commission; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 17-164

RESOLUTION

BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, the Clerk shall transmit copies of this resolution and the Exhibit attached hereto to the Director of Planning and Permitting and the Planning Commission of the City and County of Honolulu, and shall advise them in writing of the date by which the Director's report and accompanying proposed ordinance are required to be submitted to the Planning Commission.

INTRODUCED BY:

[Handwritten signature]

DATE OF INTRODUCTION:

MAY 25 2017

Honolulu, Hawaii

Councilmembers

17:5:19 25 MAY 17

EXHIBIT A



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to amend the Land Use Ordinance relating to transient vacation units and bed and breakfast homes.

SECTION 2. Section 21-2.150-2, Revised Ordinances of Honolulu 1990 ("Administrative enforcement"), is amended by adding a new subsection (e) to read as follows:

"(e) Where the director, pursuant to subsection (d), has instituted a civil action in any court of competent jurisdiction to enforce the civil fine imposed by any order issued pursuant to this section, all costs of enforcement, including legal costs and attorneys' fees, may be reduced to a judgment or recorded as a lien against the property on which such enforcement occurs. A lien recorded against the property that is registered in the bureau of conveyances or land court is enforceable in the same manner as any mortgage or other lien on real property. The interest secured by the city lien is senior to any lien recorded or registered after the city lien is recorded and subordinate to any lien recorded prior to the city lien."

SECTION 3. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-3 to read as follows:

"Sec. 21-2.150-3 Advertisements for transient vacation units or bed and breakfast homes.

(a) Advertisements.

(1) For the purposes of this section:

(A) "Advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by or at the direction of the owner of a transient vacation unit or bed and breakfast home in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and through the internet; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (B) "Rental agent" means any person who lists, solicits for prospective lessees or renters for, leases or offers to lease, or rents or offers to rent, a transient vacation unit or bed and breakfast home owned by another person.
- (2) Information required: The owner, operator, or proprietor of any transient vacation unit or bed and breakfast home, and any rental agent thereof, shall include, in all advertisements for occupancy of the unit, the following information:
- (A) For a transient vacation unit or bed and breakfast home for which a nonconforming use certificate is required, the nonconforming use certificate number and street address, including, if applicable, any apartment unit number, for the transient vacation unit or bed and breakfast home.
- (B) For a transient vacation unit that does not require a nonconforming use certificate and is a permitted use in the resort district, the Waikiki Special District resort mixed use precinct, or the A-2 medium density apartment district pursuant to Section 21-5.640(a), the street address, including, if applicable, any apartment unit number, for the transient vacation unit.
- (3) Prima facie evidence. The existence of an advertisement for a transient vacation unit or bed and breakfast home will be prima facie evidence of the following:
- (A) That the owner of the advertised unit disseminated or directed the dissemination of the advertisement in that form and manner, regardless of whether the advertisement bears the name, business address, or service mark of the rental agent; and
- (B) That a transient vacation unit or bed and breakfast home, as applicable, is being operated at the listed address.

The burden of proof shall be on the owner to establish otherwise with respect to the advertisement and that the subject property either is not being used as a transient vacation unit or bed and breakfast home, or that it is being used legally for such purpose.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (b) If any advertisement does not have the information required by subsection (a), the owner or the rental agent of the transient vacation unit or bed and breakfast home being advertised shall, within seven business days of receiving a notice of violation, terminate the dissemination of any advertisements that do not contain the required information, and shall, within seven business days of receiving a notice of violation, take action to cure the violation. Failure to do so will subject the owner or rental agent to the civil fines provided in subsection (d).
- (c) Any person violating this section is subject to the following civil fines:
- (1) For a first violation, an initial fine of \$5,000, and daily fines of \$5,000 per day until the violation is corrected;
 - (2) For a second violation occurring within a twelve-month period, a fine of \$7,500, and daily fines of \$7,500 per day until the violation is corrected. Recurring violations occur when the previous violation has been corrected and a subsequent infraction of the same section occurs; and
 - (3) For a third violation occurring within a twelve-month period, an initial fine of \$10,000, and daily fines of \$10,000 per day until the violation is corrected.

Nothing in this subsection precludes the department from seeking any other remedy against a violator of this section.

- (d) Except as otherwise provided in this section, the provisions of Section 21-2.150-2 apply to the administrative enforcement for violations of this section."

SECTION 4. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-4 to read as follows:

"Sec. 21-2.150-4 Depository of fees and civil penalties relating to transient vacation units or bed and breakfast homes.

Notwithstanding any other ordinance to the contrary, payments of fees and civil penalties relating to transient vacation units or bed and breakfast homes are to be deposited into a special account of the general fund, to be appropriately named by the department of budget and fiscal services, and used for expenses related to the regulation of such uses by the department."



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

~~continued through December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the years 1986 to 1989. Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.~~

- ~~(c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.~~
- (d)] The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate [in accordance with the following schedule:
- ~~(1) between September 1, 2000 and October 15, 2000; then~~
- ~~(2) between September 1 and October 15 of every even-numbered year thereafter.] no later than September 30 of each year. Each application to renew [shall] must include proof that: [(i) there]~~
- (1) There were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year; and [that (ii) there]
- (2) There has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy.

If the applicant does not reside on Oahu, the application must include the name, address, and phone number of an on-island licensed agent for receipt of any notices or complaints. Applicants shall keep their licensed agent information current with the department. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate[-]. except where the applicant establishes good cause for failing to meet conditions



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

of renewal. In such situations, an additional fee of \$1,000 will be assessed against the applicant upon approval of each application. In no case will an application for renewal received 45 days or more after the expiration of the renewal period be approved. The requirement for the 35 days of transient occupancies [shall] will be effective on January 1, 1995 and [shall] applies to renewal applications submitted on or after January 1, 1996.

- [(e)](c) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.
- (d) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section, and any rental agent thereof, shall comply with the provisions of Section 21-2.150-3, relating to advertisements for transient vacation units.
- (e) The nonconforming use certificate will not run with the land and will terminate upon the transfer of any interest in the real property. A new owner may apply for a conditional use permit (minor) for a transient vacation unit pursuant to the requirements of this chapter. For purposes of this subsection, "transfer" does not include:
- (1) The creation, modification, or release of a lien or encumbrance;
 - (2) The transfer, during the owner's lifetime and for estate planning purposes, of the owner's entire interest in the real property to a trust in which the owner is the sole trustee and beneficiary;
 - (3) A gratuitous transfer made to an owner's spouse, domestic partner or issue, including adopted children, or to a trust for the exclusive benefit of the owner's spouse, domestic partner or issue;
 - (4) A transfer of title to the owner's spouse, domestic partner or issue, including adopted children, effected pursuant to the owner's will, trust or the laws of intestate succession; or



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (5) For property held in joint tenancy or tenancy by the entirety, the acquisition by a surviving cotenant or cotenants of an interest in real property as a result of the right of survivorship and the death of a cotenant."

SECTION 7. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-2 [Bed and breakfast homes—] Nonconforming use certificates for bed and breakfast homes.

- (a) The purpose of this section is to prohibit bed and breakfast homes, while permitting certain bed and breakfast homes ~~[which]~~ that have been in operation since prior to December 28, 1989 to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a bed and breakfast home who holds a valid and current nonconforming use certificate pursuant to this section on the effective date of this ordinance.
- (b) ~~[The owner, operator, or proprietor of any bed and breakfast home shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence as of December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is noneonforming. Documentation substantiating existence of a bed and breakfast home as of December 28, 1989 may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the year preceding December 28, 1989. Upon a determination that the use was in existence as of December 28, 1989, the director shall issue a nonconforming use certificate for the bed and breakfast home.~~
- (c) ~~Failure to obtain a noneonforming use certificate within nine months of December 28, 1989 shall mean that the alleged noneonforming use as of December 28, 1989, is not a bona fide noneonforming use, and shall not continue as a noneonforming use, but shall be treated as an illegal use.~~
- (d) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate ~~[in accordance with the following schedule:~~



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- ~~(1) between September 1, 2000 and October 15, 2000; then~~
- ~~(2) between September 1 and October 15 of every even numbered year thereafter.] no later than September 30 of each year. Each application to renew [shall] must include proof that; [(i) there]~~
- (1) There were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for each calendar year covered by the nonconforming use certificate being renewed and that there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28 days during each such year; and [that (ii) there]
- (2) There has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy.

Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate[-], except where the applicant establishes good cause for failing to meet conditions of renewal. In such situations, an additional fee of \$1,000 will be assessed against the applicant upon approval of each application. In no case will an application for renewal received 45 days or more after the expiration of the renewal period be approved. The requirement for the 28 days of bed and breakfast occupancies [shall] will be effective on January 1, 1995 and [shall apply] applies to renewal applications submitted on or after January 1, 1996.

~~[(e) Except those bed and breakfast homes which are nonconforming uses, and, after nine months from December 28, 1989, for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section, bed and breakfast homes are prohibited in all zoning districts. Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.~~

~~(f)](c)~~ Those bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:

- (1) Detached dwellings used as bed and breakfast homes [shall] must be occupied by a family and [shall not] cannot be used as a group living facility. Rooming [shall] is not [be] permitted in bed and breakfast homes.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (2) No more than two guest rooms ~~[shall]~~ may be rented to guests, and ~~[the]~~ a maximum ~~[number]~~ of four guests are permitted within the bed and breakfast home at any one time ~~[shall be four]~~.
 - (3) ~~[There shall be no exterior]~~ Exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home is prohibited.
 - (4) One off-street parking space ~~[shall]~~ must be provided for each guest room, in addition to the required spaces for the dwelling unit.
- ~~[(g)]~~(d) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises.
- (e) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section, and any rental agent thereof, shall comply with the provisions of Section 21-2.150-3, relating to advertisements for bed and breakfast homes.
- (f) The nonconforming use certificate will not run with the land and will terminate upon the transfer of any interest in the real property. A new owner may apply for a conditional use permit (minor) for a bed and breakfast home pursuant to the requirements of this chapter. For purposes of this subsection, "transfer" does not include:
- (1) The creation, modification, or release of a lien or encumbrance;
 - (2) The transfer, during the owner's lifetime and for estate planning purposes, of the owner's entire interest in the real property to a trust in which the owner is the sole trustee and beneficiary;
 - (3) A gratuitous transfer made to an owner's spouse, domestic partner or issue, including adopted children, or to a trust for the exclusive benefit of the owner's spouse, domestic partner or issue;
 - (4) A transfer of title to the owner's spouse, domestic partner or issue, including adopted children, effected pursuant to the owner's will, trust or the laws of intestate succession; or



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (5) For property held in joint tenancy or tenancy by the entirety, the acquisition by a surviving cotenant or cotenants of an interest in real property as a result of the right of survivorship and the death of a cotenant."

SECTION 8. Section 21-5.640, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-5.640 Time sharing and transient vacation units.

- (a) Time sharing and transient vacation units ~~[shall be]~~ are permitted in the A-2 medium density apartment zoning district provided:
- ~~[(a)]~~(1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and
- ~~[(b)]~~(2) The resort district and the A-2 district ~~[shall]~~ have been rezoned pursuant to the same zone change application as part of a master-planned resort community.
- (b) This subsection applies to any transient vacation unit subject to subsection (a), or located in the resort district or the resort mixed use precinct of the Waikiki special district. The owner, operator, or proprietor of the transient vacation unit, and any rental agent thereof, shall comply with the provisions of Section 21-2.150-3, relating to advertisements for transient vacation units."



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 9. Table 21-9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct Permitted Uses and Structures"), is amended by amending the "transient vacation units" use or structure entry and the explanatory notes following the table to read as follows:

"Table 21-9.6(A) Waikiki Special District Precinct Permitted Uses and Structures"			
Use or Structure	Precinct		
	Apartment	Resort Mixed Use	Public
Transient vacation units		[P] P/c	

Ministerial uses:

- Ac = Special accessory use. Also see: Article 10, Accessory use; and Section 21-5.330, Home occupations
P = Permitted principal use
P/c = Permitted use subject to standards in Article 5
P9 = Permitted principal use subject to standards enumerated in Article 9; see Section 21-9.80-5(d), 21-9.80-6(d), or 21-9.80-8(d)
P-AMX = Within the apartment precinct, a permitted principal use only within the apartment mixed use subprecinct

Discretionary uses:

- Cm = Requires an approved Conditional Use Permit - minor subject to standards in Article 5; no public hearing required
C = Requires an approved Conditional Use Permit - major subject to standards in Article 5; public hearing required

Other:

- N/A = Not applicable as a land use category in that precinct, since it is already regulated under another land use category.

Note: An empty cell in the above matrix indicates that use or structure is not permitted in that precinct.

¹ Provided a solid wall 6 feet in height [shall] must be erected and maintained on any side or rear boundary adjoining the apartment precinct.

² Provided that where these uses are integrated with other uses, pedestrian access [shall] must be independent from the other uses, and [are] the building floor [shall] cannot be used for both dwelling and commercial purposes."



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 10. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. The Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of this ordinance with the actual date on which the ordinance takes effect.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 11. This ordinance takes effect upon its approval.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 17-164

Introduced: 05/25/17 By: ERNEST MARTIN


Committee: ZONING AND HOUSING

Title: RESOLUTION PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

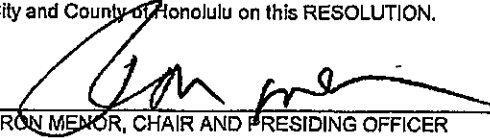
Voting Legend: * = Aye w/Reservations

10/26/17	ZONING AND HOUSING	CR-407 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
11/01/17	COUNCIL	CR-407 AND RESOLUTION 17-164 WERE ADOPTED. 8 AYES: ANDERSON, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE. 1 NO: ELEFANTE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.



GLEN K. TAKAHASHI, CITY CLERK



RON MENOR, CHAIR AND PRESIDING OFFICER



RESOLUTION

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), AS AMENDED, RELATING TO SHORT-TERM RENTAL ACCOMMODATIONS.

WHEREAS, the Council finds that bed and breakfast homes are a popular form of temporary lodging for visitors to the City; and

WHEREAS, there are a number of unpermitted bed and breakfast homes in the City, and operation of these unpermitted establishments at times adversely impact the neighborhoods in which they are located because they are unregulated; and

WHEREAS, the Council wishes to amend the Land Use Ordinance ("LUO") to permit a limited number of new bed and breakfast homes, and to strengthen the regulation of those homes to mitigate the impact of bed and breakfast homes on surrounding neighborhoods; and

WHEREAS, Council further desires to strengthen the regulation of transient vacation units by addressing the advertisements for those units; and

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) ("Charter"), provides that "[a]ny revision of or amendment to the zoning ordinances may be proposed by the council and shall be processed in the same manner as if proposed by the director [of planning and permitting]"; and

WHEREAS, Charter Section 6-1513 further provides that "[a]ny such revision or amendment shall be referred to the director and the planning commission by resolution, which resolution shall be accompanied by supporting documentation sufficient to satisfy the director's usual requirements for the commencement of processing"; and

WHEREAS, for the purposes of the Charter, the term "zoning ordinances" refers both to the codification of land use standards in the Land Use Ordinance and to ordinances zoning and rezoning particular parcels of property (Charter Section 6-1514); and

WHEREAS, ROH Chapter 2, Article 24, Part A, establishes procedures and deadlines for the processing of Council proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and clarifies the responsibility of the Director of Planning and Permitting to assist the Council in adequately preparing its proposals for processing; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 17-301

RESOLUTION

WHEREAS, it is the desire of the Council that the Director of Planning and Permitting and the Planning Commission process the proposed amendment to Chapter 21, Revised Ordinances of Honolulu 1990 ("ROH"), as amended, attached hereto as Exhibit "A"; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Planning and Permitting is directed, pursuant to Charter Section 6-1513 and ROH Chapter 2, Article 24, Part A, to process the proposed amendment to ROH Chapter 21, (the Land Use Ordinance) attached hereto as Exhibit A, in the same manner as if the proposal had been proposed by the Director; and

BE IT FURTHER RESOLVED that the Director of Planning and Permitting is directed to inform the Council upon the transmittal of the Director's report and the proposed Land Use Ordinance amendment to the Planning Commission; and



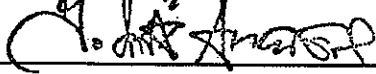
CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 17-301

RESOLUTION

BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, Part A, the Clerk shall transmit copies of this Resolution and the Exhibit attached hereto to the Director of Planning and Permitting and the Planning Commission of the City and County of Honolulu, and shall advise them in writing of the date by which the Director's report and accompanying proposed ordinance are required to be submitted to the Planning Commission.

INTRODUCED BY:



DATE OF INTRODUCTION:

OCT 20 2017

Honolulu, Hawaii

Councilmembers

EXHIBIT A



A BILL FOR AN ORDINANCE

RELATING TO SHORT-TERM RENTAL ACCOMMODATIONS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and Purpose. The purpose of this ordinance is to amend the Land Use Ordinance to further address the regulation of bed and breakfast homes and transient vacation units.

SECTION 2. Section 21-2.40-1, Revised Ordinances of Honolulu 1990 ("Minor permits"), is amended by adding a new subsection (d) as follows:

"(d) Application and Processing for a Bed and Breakfast Home.

- (1) Only persons having a real property tax home exemption under Section 8-10.4 for the tax map key parcel proposed for a bed and breakfast home are eligible for a conditional use permit (minor) for the bed and breakfast home.
- (2) All permit applications for bed and breakfast homes must include:
 - (A) The name, address, and phone number of the applicant and verification that the applicant is the owner of the zoning lot;
 - (B) The tax map key number of the tax map key parcel on which the bed and breakfast is proposed;
 - (C) Certification that the owner's primary residence is on the same tax map key parcel as the bed and breakfast home; and
 - (D) A site and/or floor plan identifying the location of guest parking on the tax map key parcel and any bedrooms to be used by the guests.
- (3) An applicant seeking a permit for a bed and breakfast home shall submit an application to the director for processing. The director shall number stamp the application and process it in the order in which it is received.
- (4) Notwithstanding Section 6-41.1(a)(8), the fee for a conditional use permit (minor) for a bed and breakfast home is \$ _____. All fees for bed and breakfast home permits, including all renewals thereof, are to be used for the city's regulation of short-term rental accommodations. As used herein,



A BILL FOR AN ORDINANCE

"short-term rental accommodations" means provision of accommodations for compensation for less than 30 consecutive days, but does not include a hotel room, units operated as a condominium hotel as defined in Section 467-30, Hawaii Revised Statutes, or a time share unit.

(5) Within 45 days of the director's acceptance of the completed application, the director shall either:

- (A) Approve the application as submitted;
- (B) Approve the application with modifications and/or conditions; or
- (C) Deny the application and provide the applicant with a written explanation for the denial.

Provided, however, that if an applicant substantially amends an application after acceptance by the director, the director has up to 45 days from the date of such amendment to act on the application as provided in this section."

SECTION 3. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-3 to read as follows:

"Sec. 21-2.150-3 Information required in advertisement for bed and breakfast home or transient vacation unit—Notice and penalty.

- (a) If an advertisement does not have the information required by Section 21-4.110-1(f), Section 21-5. (n), or Section 21-5.640(b), as applicable, the owner or the rental agent of the bed and breakfast home or transient vacation unit being advertised shall, within seven business days of receiving such notice, terminate the dissemination of any advertisements that do not contain the required information, and shall, within seven business days of receiving such notice, take action to cure the violation. Failure to do so subjects the owner or rental agent to the civil fines provided in subsection (b).
- (b) Any person violating this section shall be subject to the following civil fines:
 - (1) For a first violation, an initial fine of \$1,000; and daily fines of \$1,000 per day until the violation is corrected;
 - (2) For a second violation occurring within a twelve month period, a fine of \$3,000; and daily fines of \$3,000 per day until the violation is corrected.

A BILL FOR AN ORDINANCE

Recurring violations occur when the previous violation has been corrected and a subsequent infraction of the same code occurs;

- (3) For a third violation occurring within a twelve-month period, an initial fine of \$5,000; and daily fines of \$5,000 per day until the violation is corrected.
- (c) Except as otherwise provided in this section, the provisions of Section 21-2.150-2 shall apply to the administrative enforcement for violations of Section 21-5. (n)."

SECTION 4. Table 21-3, Revised Ordinances of Honolulu 1990 ("Master Use Table"), is amended by adding a "Bed and breakfast homes" use entry in the "Dwellings and Lodgings" category to read as follows:

**"TABLE 21-3
MASTER USE TABLE**

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Walkiki Special District; please refer to Table 21-9.6(A).

KEY: Ac = Special accessory use subject to standards in Article 5
Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
C = Conditional Use Permit-major subject to standards in Article 5; public hearing required
P = Permitted use
P/c = Permitted use subject to standards in Article 5
PRU = Plan Review Use

ZONING DISTRICTS																								
USES (Note: Certain uses are defined in Article 10.)				P-2	AG-1	AG-2	Country	R-2D, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1
DWELLINGS AND LODGINGS																								
Bed and breakfast homes							<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												



A BILL FOR AN ORDINANCE

SECTION 5. Section 21-4.110-1, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-1 Nonconforming use certificates for transient vacation units.

- (a) The purpose of this section is to treat certain transient vacation units which have been in operation since prior to October 22, 1986 as nonconforming uses and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this section.
- (b) The owner, operator, or proprietor of any transient vacation unit which is operating in an area where such use is not expressly permitted by this chapter shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the years 1986 to 1989. Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.
- (c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.
- (d) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:
 - (1) between September 1, 2000 and October 15, 2000; then
 - (2) between September 1 and October 15 of every even-numbered year thereafter.

Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient



A BILL FOR AN ORDINANCE

occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 35 days of transient occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

- (e) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.
- (f) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section, and any rental agent thereof, shall include, in all advertisements for occupancy of the unit, the nonconforming use certificate number of the transient vacation unit. For the purpose of this subsection and Section 21-2.150-3:
 - (1) "Advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by or at the direction of the owner or the owner's lessee of a bed and breakfast home in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and through the internet; and
 - (2) "Rental agent" means any person who lists, solicits for prospective lessees or renters for, leases or offers to lease, or rents or offers to rent, a bed and breakfast home owned by another person."

SECTION 6. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is repealed.

~~"[Sec. 21-4.110-2 — Bed and breakfast homes — Nonconforming use certificates.~~

- ~~(a) — The purpose of this section is to prohibit bed and breakfast homes, while permitting certain bed and breakfast homes which have been in operation since prior to December 28, 1989 to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section.~~



A BILL FOR AN ORDINANCE

- (b) ~~The owner, operator, or proprietor of any bed and breakfast home shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence as of December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence of a bed and breakfast home as of December 28, 1989 may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the year preceding December 28, 1989. Upon a determination that the use was in existence as of December 28, 1989, the director shall issue a nonconforming use certificate for the bed and breakfast home.~~
- (c) ~~Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use, but shall be treated as an illegal use.~~
- (d) ~~The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:~~
- ~~(1) between September 1, 2000 and October 15, 2000; then~~
 - ~~(2) between September 1 and October 15 of every even-numbered year thereafter.~~

~~Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for each calendar year covered by the nonconforming use certificate being renewed and that there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 28 days of bed and breakfast occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.~~

- (e) ~~Except these bed and breakfast homes which are nonconforming uses, and, after nine months from December 28, 1989, for which a nonconforming use certificate~~



A BILL FOR AN ORDINANCE

~~has been issued and renewed, as required, pursuant to this section, bed and breakfast homes are prohibited in all zoning districts. Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.~~

- ~~(f) — Those bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:~~
- ~~(1) — Detached dwellings used as bed and breakfast homes shall be occupied by a family and shall not be used as a group living facility. Rooming shall not be permitted in bed and breakfast homes.~~
 - ~~(2) — No more than two guest rooms shall be rented to guests, and the maximum number of guests permitted within the bed and breakfast home at any one time shall be four.~~
 - ~~(3) — There shall be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.~~
 - ~~(4) — One off street parking space shall be provided for each guest room, in addition to the required spaces for the dwelling unit.~~
- ~~(g) — The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises.]"~~

SECTION 7. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990 ("Specific Use Development Standards"), is amended by adding a new section to be appropriately designated by the revisor of ordinances and to read as follows:

"Sec. 21-5. Bed and breakfast homes.

- (a) As used in this section:

"Permit" means the conditional use permit (minor) for a bed and breakfast home; and

"Owner" means the person having a real property tax home exemption under Section 8-10.4 for the tax map key parcel on which the bed and breakfast home is located.

- (b) The number of permits issued and outstanding will be limited as follows:



A BILL FOR AN ORDINANCE

- (1) City-wide limit. The total number of permits in the city cannot exceed one-half of one percent of the total number of properties classified as residential by the director of budget and fiscal services pursuant to Section 8-2.2 for the 2016-2017 fiscal year. This 2016-2017 number is the permanent city-wide limit for purposes of this subsection.
- (2) Limit in each council district. The number of permits issued for properties located in each council district cannot exceed one-third of the city-wide limit established in subdivision (1). The council districts in existence on the effective date of this ordinance will hereafter be used for determining these limits, notwithstanding subsequent reapportionment.
- (3) The director shall time stamp each permit application upon acceptance thereof, and shall process each application in the order received. Applications received after the applicable permit limits have been reached will be placed on a waiting list and be eligible for processing in the order received.
- (c) The permit for the bed and breakfast home must be in the name of the owner. The owner, or in the event of real property held jointly, by the entirety, or in common, at least one individual owner, shall be present on the property at all times that the property is being used as a bed and breakfast home.
- (d) The owner shall hold a current transient accommodations tax (TAT) license and a general excise tax (GET) license for the bed and breakfast home in his or her name.
- (e) No more than three bedrooms in a bed and breakfast home may be rented to guests, and the maximum number of guests per bedroom is two.
- (f) An owner may not hold more than one permit at one time.
- (g) Section 21-2.90-2(c) and Section 21-7.40(c) notwithstanding, there can be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.
- (h) Section 21-2.90-2(c) notwithstanding, off-street parking spaces must be provided for the guests staying at the bed and breakfast home.



A BILL FOR AN ORDINANCE

- (i) The permit cannot run with the land and will terminate upon the sale or transfer of the real property. A new owner may apply for a permit pursuant to the requirements of this chapter.
- (j) The owner shall promptly notify the director in writing of the transfer of any interest in the bed and breakfast home or if he or she will no longer be residing in the bed and breakfast home.
- (k) The bed and breakfast home must be operated in accordance with the following standards:
 - (1) The owner shall provide his or her name and contact telephone number to the director and the residents on all adjoining properties.
 - (2) The owner shall maintain a register setting forth the names of all guests, the dates of their respective stays, and the year, make, model and license plate number of the vehicles used by the guests. The register shall be preserved for the term of the permit and until such time as the permit is renewed or is terminated. The director, the director's authorized agent, or the police department shall be provided access to the register upon request.
 - (3) The current permit must be posted in the interior entryway of the bed and breakfast home.
 - (4) The owner shall establish and enforce written house rules, copies of which shall be provided to each guest and posted in a prominent location in the bed and breakfast home. The rules must, at a minimum, prohibit any activity or noise that is in violation of Chapter 342F, Hawaii Revised Statutes, and any rules promulgated pursuant thereto. A copy of the house rules must be submitted with the application for the permit or any renewal thereof.
- (l) The owner shall respond promptly to any complaint received from neighboring residents regarding the operation of the bed and breakfast home. The owner shall maintain a log of every complaint received from neighboring residents, including the name and address of the neighbor, the date and time of the complaint, a detailed description of the complaint, and a detailed description of the response to the complaint. The owner shall keep the neighbor informed as to how the complaint was handled. Upon request, the director or the director's authorized agent must be provided access to the complaint log.



A BILL FOR AN ORDINANCE

- (m) If the director receives a complaint regarding a disruption by guests staying in a bed and breakfast home, the director shall make an investigation into the alleged violation, provided the director has verifiable proof that a violation has occurred. "Verifiable proof" means a valid police report number or other documentation from the police department, or documentation that a report was filed with the Department of Health or other agency charged with enforcing the conduct contained in the complaint, stating that an infraction has occurred. If the director finds that the owner did not resolve the issue in an appropriate manner, the director shall:
- (1) For the first violation within the permit period, issue a warning to the owner that a violation has occurred;
 - (2) For the second violation of the same kind within the permit period, issue a fine of \$500.00;
 - (3) For the third violation of the same kind within the permit period, issue a fine of \$1,000.00;
 - (4) For the fourth violation of the same kind within the permit period, terminate the permit.
- (n) Advertisements.
- (1) Information required: The owner and any rental agent thereof, shall include, in all advertisements for occupancy of the unit, the permit number of the bed and breakfast home. For the purpose of this subsection and Section 21-2.150-3:
 - (A) "Advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by or at the direction of the owner or the owner's lessee of a bed and breakfast home in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and through the internet; and
 - (B) "Rental agent" means any person who lists, solicits for prospective lessees or renters for, leases or offers to lease, or rents or offers to rent, a bed and breakfast home owned by another person.
- (o) Upon a showing of reasonable cause that a violation under this article has occurred, and upon 24 hours' prior written notice by certified mail, return receipt requested delivered to and received by the owner, the director or the director's



A BILL FOR AN ORDINANCE

authorized agent must be granted access to the bed and breakfast home solely for the purpose of inspecting the premises to ensure compliance with the section pertaining to the alleged violation.

(p) Permit expiration and renewal.

- (1) The permit expires two years after issuance, unless revoked prior to expiration. If a permit is suspended, time shall continue to run for measuring the period of that permit's validity.
- (2) Not more than 90, but not less than 45 days before the expiration of a permit, the owner may apply for a renewal of the permit on an appropriate application form provided by the director. The renewal is subject to the same requirements as an application for a new permit. The renewal application must be accompanied by satisfactory evidence, such as a tax clearance certificate signed by the State of Hawaii director of taxation, showing that the owner does not owe the State of Hawaii any delinquent general excise taxes, transient accommodations taxes, penalties, or interest, in connection with operation of the bed and breakfast home.
- (3) A grace period of not less than thirty days will be granted for an owner who does not renew his or her permit by its expiration date, during which period the bed and breakfast home permit shall continue in full force and effect. The owner shall pay a late fee of \$100 in addition to any renewal fees.
- (4) The renewal application must be accompanied by a renewal fee that is the same as the fee for a new permit application.
- (5) A violation of any provision of this section during the term of the previous permit period may be grounds for nonrenewal of the permit if the violation has not been corrected at the time of renewal.

(q) Revocation or suspension of permit hearing.

- (1) The director may revoke or suspend a permit for:
 - (A) Violation of this article; or
 - (B) Misrepresentations, or willful, substantial omissions of material facts in the permit application.



A BILL FOR AN ORDINANCE

The director shall provide the owner written notice of a revocation or suspension decision, stating the grounds for the suspension or revocation. The suspension or revocation takes effect 10 days following the receipt of notice of the revocation or suspension, unless a timely appeal has been filed."

SECTION 8. Section 21-5.350, Revised Ordinances of Honolulu 1990 ("Home occupations") is amended by amending subsection (i) to read as follows:

"(i) The following activities are not permitted as home occupations:

- (1) Automobile repair and painting. However, any repair and painting of vehicles owned by household members shall be permitted, provided that the number of vehicles repaired or painted shall not exceed five per year per dwelling unit. A household member providing any legal document showing ownership of an affected vehicle shall be deemed to satisfy this requirement.
- (2) Contractor's storage yards.
- (3) Care, treatment or boarding of animals in exchange for money, goods or services. The occasional boarding and the occasional grooming of animals not exceeding five animals per day shall be permitted as home occupations.
- (4) Those on-premises activities and uses which are only permitted in the industrial districts.
- (5) Use of dwellings or lots as a headquarters for the assembly of employees for instructions or other purposes, or to be dispatched for work to other locations.
- (6) Sale of guns and ammunition.
- (7) Mail and package handling and delivery businesses.
- (8) Use of the dwelling as a bed and breakfast home."



A BILL FOR AN ORDINANCE

SECTION 9. Section 21-5.640, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-5.640 Time sharing and transient vacation units.

(a) Time sharing and transient vacation units shall be permitted in the A-2 medium density apartment zoning district provided:

[(a)](1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and

[(b)](2) The resort district and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community.

(b) The owner of any transient vacation unit permitted by this section, and any rental agent thereof, shall include, in all advertisements for occupancy of the unit, the address of the transient vacation unit. For the purpose of this subsection and Section 21-2.150-3:

(1) "Advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by or at the direction of the owner or the owner's lessee of a bed and breakfast home in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and through the internet; and

(2) "Rental agent" means any person who lists, solicits for prospective lessees or renters for, leases or offers to lease, or rents or offers to rent, a bed and breakfast home owned by another person."

SECTION 10. Section 21-10.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by amending the definition of "bed and breakfast home" to read as follows:

"Bed and breakfast home" means a use in which overnight accommodations are provided to guests for compensation, for periods of less than 30 days, [in the same detached dwelling as that occupied by an owner, lessee, operator or proprietor of the detached dwelling.] on the same tax map key parcel as that which has been granted a real property tax home exemption for the bed and breakfast owner under Section 8-10.4."



A BILL FOR AN ORDINANCE

SECTION 11. Ordinance material to be deleted or repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.

SECTION 12. An owner of a bed and breakfast home who holds a valid and current nonconforming use certificate, issued pursuant to Section 21-4.110-2 on the day before the effective date of this ordinance, may continue to operate the bed and breakfast home thereunder until the nonconforming use certificate's expiration date. If the owner wishes to continue to operate the bed and breakfast home after expiration of the nonconforming use certificate, he or she shall apply for, and must be permitted to apply for, either of the following permits under Chapter 21, Revised Ordinances of Honolulu 1990, not less than 45 days prior to the expiration of the nonconforming use certificate:

- (a) A conditional use permit (minor) for a bed and breakfast home; or
- (b) An existing use permit.

If neither of the foregoing permits is obtained, the owner of the bed and breakfast home shall cease its operation upon the expiration of the nonconforming use certificate.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 13. This ordinance takes effect six months after its approval, provided that the following takes effect upon approval:

Within 90 days of the enactment of this ordinance, the director shall mail notice of the enactment of this ordinance and of Section 12 thereof to all holders of a current nonconforming use certificate for a bed and breakfast home.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

KIRK CALDWELL, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
C E R T I F I C A T E

RESOLUTION 17-301

Introduced: 10/20/17 By: IKAIKA ANDERSON

Committee: ZONING AND HOUSING

Title: RESOLUTION PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990
(THE LAND USE ORDINANCE), AS AMENDED, RELATING TO SHORT-TERM RENTAL ACCOMMODATIONS.

Voting Legend: * = Aye w/Reservations

10/26/17	ZONING AND HOUSING	CR-411 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
11/01/17	COUNCIL	CR-411 AND RESOLUTION 17-301 WERE ADOPTED. 9 AYES: ANDERSON, ELEFANTE*, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.



GLEN T. TAKAHASHI, CITY CLERK



RON MENOR, CHAIR AND PRESIDING OFFICER



A BILL FOR AN ORDINANCE

AMENDING CHAPTERS 8, 21 AND 40, REVISED ORDINANCES OF HONOLULU 1990, AS AMENDED, RELATING TO SHORT-TERM RENTALS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose and Intent. The purpose of this ordinance is to better regulate short-term rentals. Short-term Rentals, that is, the use of dwellings in residential districts for stays of less than 30 days, has grown significantly since the City first regulated them in 1989. Clearly, there is a demand for them. The use of social media has increased opportunities for visitors to consider these properties for short-term stays. Based on on-line advertising, there are an estimated 8,000 to 10,000 dwelling units available at any given time on Oahu, far exceeding the number of permitted units as currently provided under the Land Use Ordinance (LUO). Coupled with this expanding industry, the current zoning enforcement tools are outdated, particularly with respect to social media advertising and on-line booking services. In addition, the traditional hotel industry, while not opposed to short-term rentals, asserts that they should be equitably treated with respect to requirements imposed on hotels. Short-term rentals currently are taxed as residential uses, and given the type of rents charged, as much as \$8,000 per night, there is an imbalance in real property tax policy.

Short-term rentals represent economic benefits to the city and state in terms of supportive jobs, tax revenues, and diversification of the visitor accommodations industry. For some residents, they are viewed as important supplemental income, as monthly sources of revenue, or to help qualify for mortgages. Some residents pride themselves on being sensitive landlords or hosts, serving as "ambassadors of aloha." Many like the ability to use the property for their own use at least part of the year, which make it infeasible to offer the dwellings on a long-term basis.

However, for the neighborhoods that host these uses, they represent negative impacts including unfairly escalating property values, increases in noise at late hours, illegal parking, and increased traffic. There is a concern that homes are not being bought for domiciliary purposes, but as income-producing investments. Residents are generally comfortable with bed and breakfast homes, as there is an on-site resident manager or owner who is responsible for the property and can respond to any problems associated with short-term guests. In contrast, there are strong concerns about "unhosted" transient vacation rentals, particularly when there is a significant number of them in a neighborhood. With significant numbers of absentee owners and constant change in occupants, there is a change in the social patterns of neighborhoods and reduced interactions amongst neighbors, characterized as a decline in the quality of life for residents.



A BILL FOR AN ORDINANCE

The purpose of this ordinance is to balance the competing views about short-term rentals. It continues to differentiate between bed and breakfast homes and transient vacation rentals, and provides a permitting system to allow both types of operations to expand under explicit requirements. Explicit requirements and standards will be monitored through an annual renewal process. It also introduces significant penalties for illegal operations and offers a new penalty for advertising illegal operations. Lastly, it proposes a new tiered real property tax classification based on the type of short-term rental operations being conducted, without penalizing adjacent residential property assessments. This ordinance represents a regulatory system that coordinates annual zoning review with annual tax assessments.

SECTION 2. Section 8-7.1, Revised Ordinances of Honolulu 1990, as amended, ("Valuation -Considerations in fixing"), is amended to read as follows:

"Sec. 8-7.1 Valuation - Considerations in fixing.

- (c) (1) Real property shall be classified, upon consideration of its highest and best use, into the following general classes, unless it qualifies for a different class as defined in this section:
 - (A) Residential;
 - (B) Hotel and resort;
 - (C) Commercial;
 - (D) Industrial;
 - (E) Agricultural;
 - (F) Preservation;
 - (G) Public service;
 - (H) Vacant agricultural; ~~{and}~~
 - (I) Residential A[-J];
 - (J) Bed and breakfast; and
 - (K) Transient vacation unit.
- (j) "Bed and Breakfast Home" shall have the same meaning as defined and permitted as under Chapter 21, ROH.
- (k) "Transient Vacation Unit" shall have the same meaning as defined and permitted as under Chapter 21, ROH."



A BILL FOR AN ORDINANCE

SECTION 3. Section 8-10.5, Revised Ordinances of Honolulu 1990, as amended, ("Home, lease, lessees defined"), is amended to read as follows:

"Sec. 8-10.5 Home, lease, lessees defined.

(b) The subletting by the taxpayer of not more than ~~[one]~~ two rooms to a tenant shall not affect the exemption provided for by Section 8-10.4."

SECTION 4. Section 21-2.150-2, Revised Ordinances of Honolulu 1990, as amended, ("Administrative enforcement"), is amended as follows:

"Sec. 21-2.150-2 Administrative enforcement.

In lieu of or in addition to enforcement pursuant to Section 21-2.150-1, if the Director determines that any person is violating any provision of this chapter, any rule adopted thereunder or any permit issued pursuant thereto, the Director may have the person served, by mail or delivery, with a notice of violation and order pursuant to this section.

- (a) Contents of the Notice of Violation. The notice must include at least the following information:
- (1) Date of the notice;
 - (2) The name and address of the person noticed;
 - (3) The section number of the provision or rule, or the number of the permit that has been violated;
 - (4) The nature of the violation; and
 - (5) The location and time of the violation.
 - (6) The notice of violation may require the person to do any or all of the following:
 - (A) When a violation related to requirements for transient vacation units as provided under this chapter has been issued and corrected, and then a violation recurs, the violator will be assessed an initial fine of \$25,000 with the first recurrence of the notice of violation issued and imposed for each day thereafter until the violation is corrected. For the second recurring violation, the fine will be \$50,000 with the notice of violation issued and imposed for each day thereafter until the violation is corrected. For the third recurring violation, the fine will be \$100,000 with the notice of violation issued and imposed for each day thereafter until



A BILL FOR AN ORDINANCE

the violation is corrected. The third recurrence will also include attachment(s) of outstanding fines to the driver's license application or renewal, and/or real property tax. For the fourth recurring violation, the outstanding fines will be filed as a lien against the property.

- (B) When a violation related to requirements for bed and breakfast homes as provided under this chapter has been issued and corrected, and then a violation recurs, the violator will be assessed an initial fine of \$10,000 with the first recurrence of the notice of violation issued and imposed for each day until the violation is corrected. For the second recurring violation, the fine will be \$20,000 with the notice of violation issued and imposed for each day thereafter until the violation is corrected. For the third recurring violation, the fine will be \$50,000 with the notice of violation issued and imposed for each day thereafter until the violation is corrected. The third recurrence will also include attachment(s) of outstanding fines to the driver's license application or renewal, and/or real property tax. For the fourth recurring violation, the outstanding fines will be filed as a lien against the property.

- (C) Nothing in this subsection shall preclude the department from seeking any other remedy against a violator of this section.

(b) Contents of Order.

- (1) The order may require the person to do any or all of the following:
 - (A) Cease and desist from the violation.
 - (B) Correct the violation at the person's own expense before a date specified in the order.
 - (C) Pay a civil fine not to exceed \$1,000.00 in the manner, at the place and before the date specified in the order;
 - (D) Pay a civil fine not to exceed \$1,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.
- (2) The order must advise the person that the order will become final 30 days after the date of its mailing or delivery. The order must also advise that the director's action may be appealed to the zoning board of appeals.



A BILL FOR AN ORDINANCE

- (c) Effect of Order--Right to Appeal. The provisions of the order issued by the Director under this section will become final 30 days after the date of the mailing or delivery of the order. The person may appeal the order to the zoning board of appeals as provided in Section 6-1516 of the city charter. However, an appeal to the zoning board of appeals will not stay any provision of the order.
- (d) Judicial Enforcement of Order. The Director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the Director need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid."
- (e) In addition to daily civil fines, notwithstanding any other provision to the contrary, the Director may impose a fine in the amount equal to the total sum collected by the operator from the impermissible rental activity during the period in which they were subject to daily fines.

SECTION 5. Table 21-3, Revised Ordinances of Honolulu 1990, as amended, ("Master Use Table"), is amended by adding "bed and breakfast" homes and "transient vacation units" to the "Dwellings and Lodgings" category as follows:



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

A BILL FOR AN ORDINANCE

"TABLE 21-3 MASTER USE TABLE

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

KEY	Ac	=	Special accessory use subject to standards in Article 5
	Cm	=	Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
	C	=	Conditional Use Permit-major subject to standards in Article 5; public hearing required
	P	=	Permitted Use
	P/c	=	Permitted use subject to standards in Article 5
	PRU	=	Plan Review Use

ZONING DISTRICTS																					
USES (Note: Certain uses are defined in Article 10.)	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1

DWELLINGS AND LODGINGS

Bed and breakfast homes					P/c	P/c	P/c	P/c	P/c	P/c	P/c	P/c	P			P/c	P/c				
Transient vacation units							P/c	P/c	P/c	P/c	P/c	P/c	P			P/c	P/c				



A BILL FOR AN ORDINANCE

SECTION 6. Section 21-4.110-1, Revised Ordinances of Honolulu 1990, as amended, ("Nonconforming use certificates for transient vacation units"), is amended as follows:

"Sec. 21-4.110-1 Nonconforming use certificates for transient vacation units.

- (a) The purpose of this section is to treat permit certain transient vacation units, which that have been in operation since prior to October 22, 1986, as nonconforming uses and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a transient vacation unit who holds a valid and current nonconforming use certificate pursuant to this section on the effect date of this ordinance.
- (b) ~~[The owner, operator, or proprietor of any transient vacation unit which is operating in an area where such use is not expressly permitted by this chapter shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the years 1986 to 1989. Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.~~
- (c) ~~Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.~~
- (d)} The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate [in accordance with the following schedule:
 - (1) Between September 1, 2000 and October 15, 2000; then



A BILL FOR AN ORDINANCE

~~(2) Between~~ by September August 30 ~~[1 and October 15]~~ of each year ~~[every even-numbered year thereafter.]~~ Each application ~~[to renew shall]~~ must include: ~~[proof that (i) there]~~

(1) Proof of ~~[were in effect]~~ a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year;

(2) Proof ~~[and]~~ that ~~[(ii)]~~ there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 35 days of transient occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

~~[(e)]~~(c) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.

(d) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section, shall also comply with all requirements in subsections 21-5. by August of 2024. By this date, use of the dwelling as a transient vacation unit shall either cease or obtain a registration number as provided under subsection 21-5.

(e) Nonconforming use certificate numbers must be posted in any and all advertisements associated with the unit."



A BILL FOR AN ORDINANCE

SECTION 7. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, as amended, ("Bed and breakfast homes"), is amended as follows:

"Sec. 21-4.110-2 ~~[Bed and breakfast homes]~~ Nonconforming use certificates. for bed and breakfast homes.

"All bed and breakfast homes with valid nonconforming use certificates may continue to operate provided that they comply with the restrictions and standards specified in subsections 21-5. by August of 2024. By this date, use of the dwelling as a bed and breakfast home shall either cease or obtain a registration number as provided under subsection 21-5. "

~~[(a) The purpose of this section is to prohibit bed and breakfast homes, while permitting certain bed and breakfast homes, which have been in operation since prior to December 28, 1989, to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section.~~

~~(b) The owner, operator, or proprietor of any bed and breakfast home shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence as of December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence of a bed and breakfast home as of December 28, 1989 may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the year preceding December 28, 1989. Upon a determination that the use was in existence as of December 28, 1989, the director shall issue a nonconforming use certificate for the bed and breakfast home.~~

~~(c) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use, but shall be treated as an illegal use.~~

~~(d) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:~~

~~(1) between September 1, 2000 and October 15, 2000; then~~



A BILL FOR AN ORDINANCE

~~(2) between September 1 and October 15 of every even-numbered year thereafter.~~

~~Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for each calendar year covered by the nonconforming use certificate being renewed and that there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 28 days of bed and breakfast occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.~~

~~(e) Except those bed and breakfast homes which are nonconforming uses, and, after nine months from December 28, 1989, for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section, bed and breakfast homes are prohibited in all zoning districts. Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.~~

~~(f) Those bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:~~

~~(1) Detached dwellings used as bed and breakfast homes shall be occupied by a family and shall not be used as a group living facility. Rooming shall not be permitted in bed and breakfast homes.~~

~~(2) No more than two guest rooms shall be rented to guests, and the maximum number of guests permitted within the bed and breakfast home at any one time shall be four.~~

~~(3) There shall be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.~~

~~(4) One off-street parking space shall be provided for each guest room, in addition to the required spaces for the dwelling unit.~~



A BILL FOR AN ORDINANCE

~~(g) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises.]~~

SECTION 8. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990, as amended, ("Specific Use Development Standards"), is amended by adding a new section for "Bed and breakfast homes and transient vacation units." To be appropriately numbered by the Revisor of Ordinances and to read as follows:

"Sec. 21-5. Bed and breakfast homes and transient vacation units.

(a) Bed and breakfast homes and transient vacation units shall be permitted in the Resort zones and Resort Mixed Use Precincts. They shall also be permitted in the A-2 medium density apartment zoning district provided:

- (1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and
- (2) The resort district and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community.

(b) In all zoning districts where bed and breakfast homes and transient vacation units are permitted, except for in Resort zones, Resort Mixed Use Precincts, and those allowed in the A-2 medium density apartment zoning district pursuant to Section 21-5. (a), the following requirements and standards shall apply:

- (1) For a bed and breakfast home or transient vacation unit that will be occupied by transient residents for more than 30 days per calendar year, the owner, operator, or proprietor must submit the following information in the initial application:
 - i. Affirmation that the applicant of the bed and breakfast home or transient vacation units is a Natural Person.
 - ii. Affirmation that the applicant does not hold and/or operate more than one bed and breakfast establishment or transient vacation unit at one time.
 - iii. Evidence of having paid State of Hawaii General Excise Taxes (GET) and Transient Accommodations Taxes (TAT).



A BILL FOR AN ORDINANCE

- iv. Evidence of a Real Property Tax (RPT) Home Exemption for the subject property.
 - v. An initial fee of \$800 for bed and breakfast homes, and an initial fee of \$1,200 for transient vacation units.
 - vi. Evidence that the use is covered by an insurance carrier for the property.
 - vii. Confirmation that bed and breakfast and transient vacation units are permitted by the Homeowners' or Apartment Owners' Association and/or Condominium Property Regime, if applicable.
 - viii. An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast or transient vacation unit in the City and County of Honolulu.
 - ix. A floor plan showing the location of guest rooms for bed and breakfast homes, and the total number of bedrooms for transient vacation units.
- (2) Application renewal requirements. Annually, by August 30, the owner, operator, or proprietor of a bed and breakfast home or transient vacation unit that will be occupied by transient residents for more than 30 days per calendar year must submit to the department:
- i. Affirmation that the applicant for a bed and breakfast home or transient vacation unit is a Natural Person.
 - ii. Affirmation that the owner does not hold and/or operate more than one bed and breakfast establishment or transient vacation unit at one time.
 - iii. Evidence of having paid State of Hawaii General Excise Taxes (GET) and Transient Accommodations Taxes (TAT).
 - iv. Evidence of a Real Property Tax (RPT) Home Exemption for the subject property.
 - v. A renewal fee of \$200 for bed and breakfast homes, and a renewal fee of \$500 for transient vacation units.
 - vi. Evidence that the use is covered by an insurance carrier for the property.
 - vii. Confirmation that bed and breakfast and transient vacation units are permitted by the Homeowners' or Apartment Owners' Association and/or Condominium Property Regime, if applicable.



A BILL FOR AN ORDINANCE

- viii. An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast or transient vacation unit in the City and County of Honolulu.
 - ix. The renewal of a permit for a bed and breakfast or transient vacation unit shall be granted upon receipt of an application meeting all requirements set forth herein, provided that if complaints from the public indicate that noise created from patrons disturbs residents of the neighborhood in which the premises are located, or where other good cause exists, the Director may deny the renewal application.
- (3) Restrictions and Standards. Bed and breakfast homes and transient vacation units that will be occupied by transient residents for more than 30 days per calendar year must operate in accordance with the following restrictions and standards:
- i. Detached dwellings used as bed and breakfast homes shall be occupied by a family. Roomers shall not be permitted in bed and breakfast homes.
 - ii. No more than two guest rooms in a bed and breakfast shall be rented to guests, and the maximum number of guests permitted within the bed and breakfast home at any one time shall be four.
 - iii. Functioning smoke and carbon monoxide detectors must be installed in each bedroom.
 - iv. House rules, including quiet hours between 10:00 p.m. and 8:00 a.m. and emergency contact information must be provided to all guests and posted in conspicuous locations.
 - v. The owner shall provide the name and telephone number of an Oahu-based property manager to the residents of all adjoining properties.
 - vi. The owner shall maintain a current two-year registry setting forth the names and telephone numbers of all guests and the dates of their respective stays.
 - vii. There shall be no exterior sign that shows the dwelling unit is used as a bed and breakfast home or transient vacation unit.
 - viii. Approval for bed and breakfast home or transient vacation unit is not transferable, and shall not run with the land.
 - ix. Density Limit for Transient Vacation Units. The number of transient vacation units allowed shall be limited in each



A BILL FOR AN ORDINANCE

development plan area. Excluding Resort zones, Resort Mixed Use Precincts, and those allowed in the A-2 medium density apartment zoning district where the number of transient vacation units are not limited, there shall be no more than one percent of the total number of dwelling units in each development plan area allowed as transient vacation units. The total number of dwelling units shall be based on the latest figures from the U.S. Census data. Where the initial number of applications exceed this number, acceptance shall be selected on a lottery basis. When renewal applications fall below the one percent, new applications can be accepted on a lottery basis.

- (4) Dwelling units to be used as bed and breakfast homes or transient vacation units for less than 30 days per calendar year may obtain a registration for limited short-term rentals. Applicants shall annually file a registration form with the department acknowledging that rental is limited to less than 30 days per calendar year. The filing fee shall be \$50.00. The application may be filed with the department at any time.
- (5) Advertisements for any bed and breakfast home and transient vacation unit must comply with Section 40-____, ROH, regardless of the number of days it is used for transient accommodations.
- (6) Upon reasonable notice, any bed and breakfast home and transient vacation unit must be made available for inspection.
- (7) A violation of any provision of this section shall be grounds for administrative fines and nonrenewal unless corrected before the renewal deadline. However, recurring violations shall result in denial of renewal requests.

SECTION 9. Section 21-5.640, Revised Ordinances of Honolulu 1990, as amended, ("Time sharing and transient vacation units"), is amended as follows:

"Sec. 21-5.640 Time sharing [~~and transient vacation~~] units.

Time sharing [~~and transient vacation~~] units shall be permitted in the A-2 medium density apartment zoning district provided:



A BILL FOR AN ORDINANCE

- (a) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and
- (b) The resort district and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community.

SECTION 10. Table 21-6.1, Revised Ordinances of Honolulu 1990, as amended, ("Off-street Parking Requirements"), is amended by adding a new use for "Bed and breakfast homes, transient vacation units" to read as follows:



A BILL FOR AN ORDINANCE

"Table 21-6.1 Off-street Parking Requirements	
Use ¹	Requirement ²
COMMERCE AND BUSINESS	
Automotive and boat parts and services, but not storage and repair; automobile and boat sales and rentals; catering establishments; dance or music schools; financial institutions; home improvement centers, laboratories (medical or research); medical clinics; offices, other than herein specified; personal services; photographic processing; photography studios; plant nurseries; retail establishments other than herein specified; and veterinary establishments	1 per 400 square feet
Bed and breakfast homes, transient vacation units ⁷	1 per bedroom
Bowling alleys	3 per alley
Business services	1 per 500 square feet
Convenience stores; and sales; food and grocery stores (including neighborhood grocery stores)	1 per 300 square feet
Data processing facilities	1 per 800 square feet
Drive-thru facilities (window or machine)	5 stacking spaces
Eating and drinking establishments (including bars, nightclubs, taverns, cabarets, and dance halls)	1 per 300 square feet, provided the total floor area of all eating and drinking establishments comprises 50 percent or more of the floor area developed on the zoning lot. Otherwise, 1 per 400 square feet, including outdoor dining areas
Laundromats, cleaners: coin operated	1 per 2 washing machines
Mobile commercial establishments: 3 or more	5 per vehicle
Sales: appliance, household and office furniture; machinery; and plumbing and heating supply	1 per 900 square feet
Self-storage facilities	1 per 2,000 square feet
Shopping centers ³	1 per 300 square feet
Skating rinks	1 for each 4 skaters of the rink's maximum capacity or 1 per 1,500 square feet of skating surface, whichever is greater

Notes:

- Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements.
- All references to square feet refer to floor area.
- Parking standards for individual uses shall prevail if they are not part of a commercial use that meets the definition of "shopping center."
- Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements for the BMX-4 district.
- All references to square feet refer to floor area.
- Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements for the Waikiki special district.
- Excluding transient vacation units and bed and breakfast homes in Resort zones, the Resort Mixed Use Precinct, and those identified in section 21-5.640."



A BILL FOR AN ORDINANCE

SECTION 11. Table 21-9.6(A), Revised Ordinances of Honolulu 1990, as amended, ("Waikiki Special District Precinct Permitted Uses and Structures") is amended by adding new uses, "Bed and breakfast homes" and "Transient vacation units" to read as follows:

"Table 21-9.6(A) Waikiki Special District Precinct Permitted Uses and Structures"			
Use or Structure	Precinct		
	Apartment	Resort Mixed Use	Public
<u>Bed and Breakfast Homes</u>	<u>P/c</u>	<u>P</u>	
<u>Transient Vacation Units</u>	<u>P/c</u>	<u>P"</u>	

SECTION 12. Chapter 40, Revised Ordinances of Honolulu 1990, as amended, "Prohibited Activities in the City" is amended by adding a new Section for "Advertisement of Short-term Rentals." To be appropriately numbered by the Revisor of Ordinances and to read as follows:

"Sec. 40-_____ Advertisement of Short-term Rentals.

Sec. 40-_____.1 Definitions.

As used in this article:

"Advertisement" means any sign, banner, pictorial statement, broadcast in English or any other language, used to publicize or offer for accommodation any dwelling unit or lodging unit, or portion thereof, or any other permanent or temporary habitable space within the City and County of Honolulu as a transient vacation unit or bed and breakfast home.

"Bed and breakfast home" shall have the same meaning as under Section 21-10.1, ROH.

"Person" includes businesses, non-profit organizations, firms, partnerships, corporations, and individuals.



A BILL FOR AN ORDINANCE

"Transient vacation unit" shall have the same meaning as under Section 21-10.1, ROH.

Sec. 40- .2 Prohibition.

- (a) It is unlawful for any person to cause the advertisement of a short-term bed and breakfast home and transient vacation unit without including in the advertisement an up-to-date registration number that will be provided upon compliance with Section 21-5. .
- (b) Upon receiving a notice of violation, the advertisement shall be removed within seven days. If not removed within seven days, a fine shall be levied for each day the advertisement is on public display, as provided in subsection 4 herein.
- (c) The existence of an advertisement will be prima facie evidence of a bed and breakfast home or a transient vacation unit being operated at the listed address. The burden of proof shall be on the property owner to establish otherwise that the subject property is not being used as a transient vacation unit or bed and breakfast home, or that the advertisement was placed without the property owner's knowledge or consent.

Sec 40- 3 Exceptions.

- (a) Legally established hotels, whether owned by one person, or owned individually as unit owners, but operating as a hotel as defined by Section 21, Article 10, ROH are exempt from this advertising restriction.
- (b) Legally established time-sharing units, as provided under subsection 21-5.640 are exempt from this advertising restriction.
- (c) Legally established short-term rentals in Resort zones, Resort Mixed Use Precincts, and those allowed in the A-2 medium density apartment zoning district where the number of transient vacation units are not limited are exempt from this advertising restriction.
- (d) Legally established long-term rental units are exempt from this advertising restriction. All advertisements associated with long-term rentals shall specify a rental duration that exceeds 30 days.



A BILL FOR AN ORDINANCE

Sec 40- 4. Citations-Penalties.

Any person who violates any of the provisions of this article shall be fined not less than \$25,000.00 and not more than \$50,000.00 for each day that the advertisement is on public display beyond seven days from receiving a notice of violation. Landowners, agents, or any other person associated with the property shall be liable for each violation, whether or not they are named in the advertisement."



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

A BILL FOR AN ORDINANCE

SECTION 13. Ordinance material to be repealed is bracketed and stricken. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.

SECTION 14. This ordinance shall take effect on May 1, 2019.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

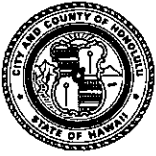
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

KIRK CALDWELL, Mayor
City and County of Honolulu



A BILL FOR AN ORDINANCE

RELATING TO COUNTY INSPECTIONS

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and Purpose.

The Council finds that inspections conducted to ascertain compliance with county ordinances, rules, or regulations are vital to maintaining the public health, safety, and welfare. Such inspections enforce lawful use of property, ensure safe and environmentally sustainable improvements on the land, and enhance public confidence in civil law enforcement.

While such inspections often rely on visual observations to ascertain compliance, they may also rely upon statements made by the property owners and others. However, City officials experience situations where people are not forthright with information. Proving that someone has given false or misleading information, or has omitted or withheld information, is difficult. However, the prospect of criminal prosecution may encourage property owners and others to provide truthful and accurate statements.

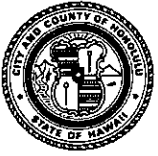
Therefore, the Council believes an amendment to the ROH is warranted to explicitly establish the offense of knowingly making a false statement to a city official as a misdemeanor.

SECTION 2. Section _____, ROH, is amended to add as follows:

Sec. _____ Making false statements to City officials.

- (1) Penalty for Knowingly Making a False Statement. Any person who knowingly makes a false statement in oral, written, printed, or electronic form, to a city official in the course of the official's investigation to ascertain compliance with any ordinance, rule, or regulation, shall be guilty of a misdemeanor.
- (2) Unless specified otherwise, violations of this Section shall be punishable by up to one year in prison, a fine of up to \$2,000, and up to 80 hours of community service. In determining punishment, the impact of the violation on public health, safety and welfare shall be considered.

SECTION 3. Repealed ordinance material is bracketed. New ordinance material underscored.



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

KIRK CALDWELL, Mayor
City and County of Honolulu



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

RELATING TO SHORT-TERM RENTALS

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and Purpose.

The council finds that the illegal use of residential properties as short-term vacation accommodations has caused discord in many communities and exacerbated the shortage of housing. Some property owners knowingly violate ordinances that prohibit short-term rentals, while other owners who offer short-term rentals may not be aware the activity is illegal, or even regulated.

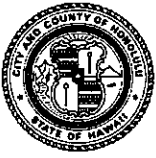
One mechanism to deter illegal short-term rentals would be an affirmative statement by a property seller to a buyer on whether the property may or may not be used for short-term rentals. Such disclosure would provide more complete information to the buyer of the property's legal income-producing potential, and may curb some of the price inflation that occurs when homes are marketed as income-producing investment properties instead of as dwellings for full-time residents.

Therefore, the Council believes an amendment to the Revised Ordinances of Honolulu (ROH) is warranted to require disclosure of whether short-term rentals are allowed on a property that is being sold.

SECTION 2. There shall be a new section to the ROH as follows:

Sec. _____ Seller disclosure of residential property's eligibility to be used for short-term rentals.

- (a) The purpose of this Section is to require disclosure of a residential property's eligibility to be used for short-term rentals when that property is sold. Such disclosure is intended to minimize misunderstandings and encourage people to comply with regulations on short-term rentals.
- (b) "Short-term rentals" includes transient vacation units and bed and breakfast homes as defined and regulated in Chapter 21 ROH.



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

- (c) Prior to the closing of escrow or execution of a lease of _____ year(s) or longer, the seller or lessor must obtain from the Department of Planning and Permitting a disclosure form stating if the property is or is not eligible to be used as a bed and breakfast home or a transient vacation unit. This statement must be disclosed to the buyer or lessee. The disclosure form shall be dated by the department within 60 days of the sales or lease transaction.
- (d) If the property has been used as a legal-short-term rental, the seller shall also disclose to the buyer:
 - (1) Any government permit for short-term rental, such as a nonconforming use certificate.
 - (2) Tax clearance certificate as proof that general excise taxes and transient accommodation taxes have been paid.
- (e) Penalty for failure to disclose. Any person who violates this Section shall be subject to a misdemeanor and subject to penalties specified in Sections 21-2.150-1 and 21-2.150-2.

SECTION 3. New ordinance material is underscored.



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 4. This ordinance takes effect upon its approval.

INTRODUCED BY:

DATE OF INTRODUCTION:

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

KIRK CALDWELL, Mayor
City and County of Honolulu